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Evidence-Based Transitional Justice: Incorporating Public Opinion into the Field, with New Data from Iraq and Ukraine

ABSTRACT. The field of “transitional justice” refers to a range of processes and mechanisms for accountability, truth-seeking, and reconciliation that governments and communities pursue in the aftermath of major societal traumas, including civil war, mass atrocities, and authoritarianism. This relatively new field emerged in the 1980s as scholars, practitioners, and policymakers looked for guidance to support post-authoritarian and post-communist transitions to democracy in Eastern Europe and Latin America. Since then, the field has grown rapidly – so rapidly that it is outpacing its capacity to learn from past mistakes. Recent methodological advances in the study of public attitudes about transitional justice through quantitative surveys and qualitative interview methods provide unprecedented insights into how different mechanisms – including domestic and international prosecutions, truth commissions, amnesty laws, and compensation – are perceived by their intended beneficiaries. The results have been troubling. Numerous studies in diverse contexts found that some of the most well-known transitional justice mechanisms, including those employed in South Africa, Rwanda, and Cambodia, failed to achieve their objectives of peacebuilding and reconciliation. In some cases, these policies had harmful consequences for their intended beneficiaries, including retraumatization and perceived “justice gaps” between victims’ preferred remedies and their actual outcomes.

There is an urgent need for the field of transitional justice to learn from this growing body of empirical research to develop evidence-based policies and programs that achieve their intended objectives. This Feature critically reviews the intellectual development of the field, consolidating empirical findings of relevant studies across disciplines – law, political science, sociology, economics, public health, psychology, and anthropology – and identifying open debates and questions for future research. We focus on research about public attitudes toward transitional justice in the communities directly impacted by conflict. In addition to reviewing previous research, we present new data from original public opinion surveys in Iraq and Ukraine relevant to ongoing transitional justice efforts in those countries. We use this evidence to identify lessons learned, including mistakes, in the design and implementation of previous transitional justice processes. We conclude by discussing the normative and prescriptive implications of our findings for efforts to improve future transitional justice laws and policies.



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INTRODUCTION

Transitional justice seeks to bring about social and political change following major episodes of conflict, unrest, or human-rights violations. There are a wide range of transitional justice mechanisms including criminal prosecutions, truth commissions, reparations for victims, amnesties and pardons, and other community-based justice mechanisms. The term “transitional justice” originated in the 1980s, prompted by a wave of democratic transitions in Eastern Europe and Latin America. For its first twenty years, the field was driven largely by theories and assumptions that had not been empirically verified. There was little evidence to guide the design of the first major transitional justice mechanisms, like the International Criminal Tribunal for the Former Yugoslavia (ICTY) established in 1993, the International Criminal Tribunal for Rwanda (ICTR) established in 1994, and South Africa’s Truth and Reconciliation Commission (TRC) established in 1996. Instead, these mechanisms, established in close succession, were described as “experiments,”¹ reflecting uncertainty about their prospects for success.

After an initial period of enthusiasm and optimism in the 1990s,² the field of transitional justice came under scrutiny. Critics identified several systemic problems, including a lack of clarity around key concepts, underdeveloped theories of change, ideological biases reflecting the field’s intellectual domination by scholars and institutions in the United States and Europe, selective support for accountability, a tendency to impose top-down interventions without adequate knowledge of local context, and concerns about the emergence of a “transitional-

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1. See, e.g., WILLIAM A. SCHABAS, *THE UN INTERNATIONAL CRIMINAL TRIBUNALS: THE FORMER YUGOSLAVIA, RWANDA AND SIERRA LEONE* 8 (2006) (describing the International Criminal Tribunal for the Former Yugoslavia (ICTY) as the “first experiment with international justice”); *International Criminal Justice Figures Gather at TCD*, TRINITY COLL. DUBLIN (Dec. 20, 2006), https://www.tcd.ie/news_events/articles/international-criminal-justice-figures-gather-at-tcd [<https://perma.cc/EA93-453A>] (describing the International Criminal Tribunal for Rwanda (ICTR) as “the first experiment of international justice based in Africa”); Eugene Nicholas Isaac, *A Critical-Theoretic Study of the South African Truth and Reconciliation Commission: With Reference to the Work of Jürgen Habermas* 288 (Apr. 2006) (Ph.D. dissertation, University of Leeds) (on file with the White Rose Libraries, Universities of Leeds, Sheffield & York) (describing South Africa’s Truth and Reconciliation Commission (TRC) as “an experiment that was based on unstable and non-persuasive foundations”).
 2. Leslie Vinjamuri & Jack Snyder, *Law and Politics in Transitional Justice*, 18 ANN. REV. POL. SCI. 303, 315 (2015) (suggesting that the 1990s were “the heyday of optimism among advocates of creating transitional justice institutions”).

justice industry” fueled by Western donor countries and private firms whose interests did not always align with the purported beneficiaries of their work.³

A series of review articles starting in 2008 warned that the field was based on little evidence despite the high-stakes – arguably “life or death”⁴ – nature of the transitional justice programs and policies that were implemented for vulnerable populations in some of the most impoverished and war-torn countries in the world.⁵ These scholars agreed on the need for more empirical research. In response, researchers from several fields, including law, anthropology, sociology, political science, psychology, and public health, used diverse methodological approaches, both qualitative and quantitative, to evaluate how local populations perceived programs and policies “on the ground.”

This new wave of microlevel evidence was discouraging. Many researchers found that transitional justice policies failed to achieve their objectives or – even worse – had unintended harmful consequences. In South Africa, surveys and interviews with victims of apartheid found that many felt betrayed by an unconditional amnesty process that was seen as being too quick to forgive perpetrators without requiring apologies or adequate reparations.⁶ In Cambodia, the joint

3. See, e.g., Duncan McCargo, *Transitional Justice and Its Discontents*, 26 J. DEMOCRACY 5, 5-6 (2015) (observing that the field “has become a vast global industry that employs tens of thousands of people”); Kieran McEvoy, Ron Dudai & Cheryl Lawther, *Criminology and Transitional Justice*, in THE OXFORD HANDBOOK OF CRIMINOLOGY 391, 391 (Alison Liebling, Shadd Maruna & Lesley McAra eds., 2017) (describing the field as having a kind of “swagger” that is “underpinned by the enormous expenditure of resources involved”).
4. U.N. Assistant Secretary General and Assistant Administrator of the U.N. Development Programme (UNDP) Asako Okai, wrote: “Public demand for accountability is at an all-time high, as the daily decisions that states make have near immediate life or death consequences, particularly for people from marginalized communities.” Lorena Mellado, Chelsea Shelton, Aparna Basnyat, Krishna Velupillai, Chris Mahoney & Djordje Djordjević, *From Justice for the Past to Peace and Inclusion for the Future: A Development Approach to Transitional Justice*, UNITED NATIONS DEV. PROGRAMME 5 (Nov. 2020), <https://undp.org/sites/g/files/zskgke326/files/publications/UNDP-From-Justice-for-the-Past-to-Peace-and-Inclusion.pdf> [<https://perma.cc/NX8P-7C6L>].
5. See, e.g., Oskar N.T. Thoms, James Ron & Roland Paris, *The Effects of Transitional Justice Mechanisms: Summary of Empirical Research Findings and Implications for Analysts and Practitioners* 4 (Apr. 2008) (unpublished manuscript) (on file with the University of Ottawa Centre for International Policy Studies) (“There is little evidence that [transitional justice (TJ)] produces either beneficial or harmful effects.”).
6. See, e.g., David Backer, *Watching a Bargain Unravel? A Panel Study of Victims’ Attitudes About Transitional Justice in Cape Town, South Africa*, 4 INT’L J. TRANSITIONAL JUST. 443, 443-45 (2010) (describing a longitudinal survey of 153 victims of apartheid conducted at two points in time, 2002-2003 and 2008, which found a decline in support for the TRC over time attributed to “a marked decline in approval of amnesty and decreased acceptance of its necessity, plus an increased desire for various forms of accountability”); Augustine S.J. Park & Madalena

United Nations-Cambodian tribunal tasked with prosecuting war crimes committed by the Khmer Rouge convicted only three people after spending nearly \$300 million over eleven years.⁷ The tribunal was further plagued by allegations of corruption.⁸ A survey of Cambodians found that fifty-three percent would prefer to “spend money on something other than the [tribunal]” and seventy-six percent felt it was “more important to focus on problems Cambodians face in their daily lives than to address crimes committed during the Khmer Rouge regime.”⁹ Qualitative-interview studies similarly found that many Cambodians viewed the tribunal as out of touch with ordinary people,¹⁰ too slow,¹¹ and a disappointment.¹²

The late 1990s and 2000s witnessed the creation of many other international and hybrid judicial bodies. These included a permanent international atrocities court—the International Criminal Court (ICC)—and ad hoc mechanisms such as the ICTY and ICTR. The perceived failures of many of these mechanisms

Santos, *The Counter-Reparative Impacts of South Africa’s Reparations Gap: Victims as Reparations ‘Experts’ and the Role of Victims’ Organizations*, 49 J.L. & SOC’Y 635, 646 (2022) (“[M]any victims felt betrayed by the TRC, as perpetrators received immediate amnesties while victims were forced to wait for reparations [that were] well below what they felt they were promised.”).

7. Seth Mydans, *11 Years, \$300 Million and 3 Convictions. Was the Khmer Rouge Tribunal Worth It?*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/world/asia/cambodia-khmer-rouge-united-nations-tribunal.html> [<https://perma.cc/U58P-4YLN>].
8. Seth Mydans, *Corruption Allegations Affect Khmer Rouge Trials*, N.Y. TIMES (Apr. 9, 2009), <https://www.nytimes.com/2009/04/10/world/asia/10cambo.html> [<https://perma.cc/NEV3-CHBD>].
9. Phuong Pham, Patrick Vinck, Mychelle Balthazard, Sokhom Hean & Eric Stover, *So We Will Never Forget: A Population-Based Survey on Attitudes About Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia*, HUM. RTS. CTR., U.C. BERKELEY SCH. OF L. 35 (Jan. 2009), https://www.law.berkeley.edu/files/IHRLC/So_We_Will_Never_Forget.PDF [<https://perma.cc/923V-4Q62>]. The survey further revealed that one-third of respondents did not believe the hybrid court was neutral. *Id.* at 3-4.
10. Tara Urs, *Imagining Locally-Motivated Accountability for Mass Atrocities: Voices from Cambodia*, 4 SUR-INT’L J. HUM. RTS. 61, 77-78 (2007) (finding that approximately twenty percent of 117 Cambodian interviewees were unwilling to engage with the court and that many of these viewed it as “above” ordinary people).
11. Wendy Lambourne, *Justice After Genocide: Impunity and the Extraordinary Chambers in the Courts of Cambodia*, 8 GENOCIDE STUD. & PREVENTION: INT’L J. 29, 32 (2014) (quoting a female survivor of the Khmer Rouge, who asked, “[W]hy they don’t make the hearings quickly, why do they keep delaying?”).
12. Heather Ryan & Laura McGrew, *Performance and Perception: The Impact of the Extraordinary Chambers in the Courts of Cambodia*, OPEN SOC’Y JUST. INITIATIVE 33 (2016), <https://www.justiceinitiative.org/uploads/106d6a5a-c109-4952-a4e8-7097f8e0b452/performance-perception-eccc-20160211.pdf> [<https://perma.cc/PF28-83D3>] (quoting a Cambodian lawyer as saying, “I am disappointed in the court . . . because so few who committed crimes were prosecuted”).

prompted criticism of “top-down,” state-led justice processes.¹³ Beginning in the 2000s, a “local turn” in transitional justice fueled an increase in international assistance for customary, traditional, community-based, and other “bottom-up” approaches.¹⁴ These included Rwanda’s *gacaca* courts, which were based on pre-colonial, customary legal traditions, and the Ugandan Acholi people’s traditional cleansing rituals.¹⁵ However, surveys and interviews soon revealed serious concerns with these bottom-up approaches as well. In Rwanda, studies found that the *gacaca* courts – initially praised by the international community as a promising experiment in community-led justice – were viewed by many Rwandans as a tool for strengthening the government’s authoritarian rule.¹⁶ The courts exposed and likely deepened distrust between ethnic groups¹⁷ and resulted in re-traumatization and stigmatization of victims, particularly female victims of sexual violence who were required to testify publicly.¹⁸

In other contexts, including Iraq and Spain, flawed or insufficient transitional justice processes contributed to disillusionment with weak democracies and resulted in “authoritarian nostalgia” for former dictatorships that are remembered, or at least imagined, to have provided more economic and political

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13. Adam Kochanski, *The “Local Turn” in Transitional Justice: Curb the Enthusiasm*, 22 INT’L STUD. REV. 26, 29 (2020) (summarizing criticisms of “state-led . . . TJ interventions” and noting that “critics have . . . raised concerns about the wisdom of imposing TJ in a top-down direction in mostly non-Western societies”).
 14. See, e.g., *id.* at 29–30 (citing criticisms including the purported mismatch between trials and truth commissions and local cultures and their “failure to secure local agency and participation in state-level [transitional justice] efforts”); Rosalind Shaw & Lars Waldorf, *Introduction: Localizing Transitional Justice*, in LOCALIZING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE 3, 4 (Rosalind Shaw & Lars Waldorf eds., 2010) (“[T]ransitional justice has itself undergone a shift toward the local.”).
 15. Kochanski, *supra* note 13, at 35.
 16. See, e.g., ANURADHA CHAKRAVARTY, INVESTING IN AUTHORITARIAN RULE: PUNISHMENT AND PATRONAGE IN RWANDA’S GACACA COURTS FOR GENOCIDE CRIMES 2–3, 24 (2016) (arguing that the *gacaca* courts “relied heavily on forms of social complicity” and facilitated “authoritarian regime consolidation”).
 17. Max Rettig, *Gacaca: Truth, Justice, and Reconciliation in Postconflict Rwanda?*, 51 AFR. STUD. REV. 25, 29 (2008) (“Gacaca is fueling – or at least exposing – conflict, resentment, and ethnic disunity.”).
 18. See Karen Brounéus, *Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts*, 39 SEC. DIALOGUE 55, 69 (2008) (describing the re-traumatization that women went through when “witnessing” in front of the *gacaca* about their sexual assault); Karen Brounéus, *The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health*, 54 J. CONFLICT RESOL. 408, 408 (2010) (“[G]acaca witnesses suffer from higher levels of depression and PTSD than do nonwitnesses . . .”).

stability.¹⁹ Despite these troubling findings, governments and major international organizations continue to implement many of the same transitional justice programs and policies without incorporating lessons that emerged from surveys, interviews, and other testimony from the intended beneficiaries of these interventions.²⁰

This Feature argues that there is an urgent need for the field of transitional justice to learn from recent methodological advances in the study of public attitudes to develop more evidence-based policies and programs. Research considering public attitudes that is conducted both ethically and rigorously can better achieve transitional justice's intended objectives, reduce the likelihood of unintended harmful consequences, and improve its perceived legitimacy. In this Feature, we make two primary contributions. First, we conduct a systematic literature review of empirical studies on transitional justice to highlight knowledge gaps and potential biases.²¹ Systematic literature reviews like ours, as well as "meta-analytic" reviews that reanalyze and summarize data from previous studies,²² are powerful tools that enable scholars to comprehensively map patterns in fields of research using transparent search parameters and coding procedures. These methods are valuable both for synthesizing and visualizing patterns in previous scholarship and discouraging sweeping claims about "the literature" that are often incomplete and biased.²³ Second, we present evidence from our original studies on public attitudes toward transitional justice in Ukraine and Iraq, two cases that demonstrate the importance of understanding the

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19. See, e.g., Marsin Alshamary, *The Iraq Invasion at Twenty: Iraq's Struggle for Democracy*, 34 J. DEMOCRACY 150, 157 (2023) ("Some Iraqi youth have expressed authoritarian nostalgia, despite never having lived under Baathism."); Joan Barceló, *The Emotional Underpinnings of Attitudes Toward Transitional Justice*, 66 POL. STUD. 480, 497 (2018) (finding a marginally significant correlation between nostalgia for the Franco regime in Spain and lower levels of support for transitional justice).
 20. As of 2011, well over a billion dollars had been spent on transitional justice programs around the world. Harvey M. Weinstein, *Editorial Note: The Myth of Closure, the Illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief*, 5 INT'L J. TRANSITIONAL JUST. 1, 1 (2011).
 21. To our knowledge, the most recent comprehensive review of empirical studies on transitional justice was conducted in 2012. See Anna Macdonald, *From the Ground Up: What Does the Evidence Tell Us About Local Experiences of Transitional Justice?*, 1 TRANSITIONAL JUST. REV. 72, 72 (2015).
 22. See Lindsay S. Uman, *Systematic Reviews and Meta-Analyses*, 20 J. CAN. ACAD. CHILD & ADOLESCENT PSYCH. 57, 57 (2011).
 23. See Charles O. Cummings, Jessica Eisenbarth & David D.R. Kruick, *The Value of N-of-1 Data in Zoological Medicine: A Methodological Review*, 54 J. ZOO & WILDLIFE MED. 417, 417 (2023) (noting advantages of systematic literature reviews over narrower reviews, including "minimizing omission of relevant articles, thereby reducing the potential for mischaracterization of the literature").

experiences and preferences of the affected populations. These studies speak to both the opportunities and limitations of public opinion research about transitional justice.

Part I defines transitional justice and briefly summarizes the intellectual development of the field. It describes the most common types of transitional justice mechanisms: criminal prosecutions, reparations and compensation, truth and reconciliation commissions, amnesties and pardons, formal apologies, vetting, and other customary or community-based justice mechanisms.

Part II provides an overview of the empirical turn in transitional justice scholarship, emphasizing trends in public opinion research. In this Part, we conduct a systematic literature review of 329 studies of attitudes toward transitional justice among conflict-affected populations. We focus on attitudinal studies rather than other types of empirical studies (e.g., cross-national datasets and event studies based on archives or local news reports) because the former provide direct evidence of the real-world effects of transitional justice processes on their intended beneficiaries. Our analysis identifies several patterns that are problematic for knowledge production and equity. For one, the field continues to be dominated by scholars and institutions from the United States and Western Europe, while scholars from countries where transitional justice programs tend to be implemented are underrepresented. The literature also focuses on a small number of unique cases like South Africa and Northern Ireland, while cases in the Middle East and Asia are understudied. We also find that criminal prosecutions receive more attention than victim-centered and restorative mechanisms such as compensation, apologies, and dialogues, which may reflect the focus of U.S. and international criminal-law mechanisms on the punishment of perpetrators rather than remedies for victims.

In Part III, based on our review of the existing literature, we identify four recurring debates common to many empirical studies of transitional justice: 1) Who should be responsible for administering justice? 2) What are the limits of reconciliation and forgiveness? 3) How do experiences during conflict, like exposure to violence, affect attitudes towards transitional justice mechanisms? And 4) how does shared identity (e.g., religion, ethnicity, tribe) shape individuals' willingness to forgive or demands for accountability? The answers to these questions vary widely between studies conducted in different countries and even between studies conducted across different regions or populations within the same country.

Part IV draws on findings from two original public opinion surveys in Ukraine in 2017²⁴ and in Iraq between 2018 and 2021²⁵ to further explore the key debates identified in Part III. Important differences between these two cases—including in the relationship between personal experiences with wartime harm and attitudes toward peace and justice, as well as differing levels of trust in domestic, international, or customary legal institutions—illustrate the need for highly contextualized legal and policy responses. We discuss how our research may inform ongoing transitional justice efforts in Iraq and Ukraine.

Part V concludes with the normative and prescriptive implications of our findings. We highlight the need for more empirical research to ensure that transitional justice policies and programs are making progress toward their intended objectives and not causing unintended harm. We also call for more support for scholars and research institutions in countries affected by transitional justice processes to address their extreme underrepresentation in the literature as revealed by our meta-analysis. We further describe approaches to incorporate attitudinal data into the design of transitional justice processes in ways that acknowledge the voice and agency of conflict-affected populations, rather than treating them as powerless victims. The ultimate goal of this Feature is to promote evidence-based transitional justice policies and programs that are tailored to local contexts and attentive to the concerns of affected populations and thus more likely to be perceived as legitimate and effective.

I. A BRIEF HISTORY OF THE FIELD

This Part defines transitional justice and summarizes the major types of transitional justice mechanisms, including criminal prosecutions, reparations and compensation, amnesties and pardons, apologies, vetting, community-based justice mechanisms, and memorialization mechanisms.

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24. See Ala' Alrababa'h, Rachel Myrick & Isaac Webb, *Do Donor Motives Matter? Investigating Perceptions of Foreign Aid in the Conflict in Donbas*, 64 INT'L STUD. Q. 748, 752-55 (2020) (discussing a related study by Alrababa'h and Myrick based on the same survey).
 25. Parts of these data have been previously published in Kristen Kao & Mara R. Revkin, *Retribution or Reconciliation? Post-Conflict Attitudes Toward Enemy Collaborators*, 67 AM. J. POL. SCI. 358, 366-71 (2023); *Reintegration in Iraq: A Perception Survey to Assess Community Readiness for Return and Reintegration of Families with Perceived ISIL Affiliation in Pilot Areas*, U.N. DEV. PROGRAMME IRAQ 7-13 (Aug. 2021), https://www.undp.org/sites/g/files/zskgke326/files/migration/iq/UNDP_IQ_Perception_Survey.pdf [<https://perma.cc/K3D3-2CEF>]; and *Reintegration Perception Survey Report: Four Areas: Al-Qa'im and Habaniya in Anbar, Tuz Khurmato in Salah al-Din, and Muhalabiya in Ninewa*, U.N. DEV. PROGRAMME IRAQ 5-13 (Nov. 2022) https://www.undp.org/sites/g/files/zskgke326/files/2023-03/UNDP_IQ_Reintegration_Perceptions_Survey_Report.pdf [<https://perma.cc/2UZ7-ZJFW>] [hereinafter *Perception Surveys Report*].

A. What Is “Transitional Justice”?

Transitional justice is a contested field in which concepts, definitions, and theories of change remain unclear. We define transitional justice broadly as *forms of justice that seek to bring about social and political change following major episodes of societal trauma or crises including armed conflict, authoritarian repression, genocide, or other widespread human-rights violations.*²⁶ Below, we explain why we prefer this definition to narrower alternatives. The field known as “transitional justice” emerged after the end of the Cold War in the 1980s to provide guidance for post-authoritarian and post-communist transitions to democracy in Latin America and Eastern Europe. Some scholars trace the origins of the field to earlier periods of transition including the Nuremberg Trials after World War II, the aftermath of the French Revolution,²⁷ and as far back as ancient Greece.²⁸

A fundamental challenge for the field is that important stakeholders have different views on what the objectives of transitional justice should be. Even when they agree on a set of common objectives, they often disagree on how they should be prioritized. The field developed around a normative assumption that the goal of post-communist, post-authoritarian, and post-conflict transitions was to bring about neoliberal capitalist democracies.²⁹ This assumption is increasingly called into question by scholars and practitioners who advocate for “a radicalized transitional justice that contributes to decolonization.”³⁰ Others disagree over which is a more important objective: providing remedies for victims or punishing perpetrators. The U.N. Office of the High Commissioner for Human Rights emphasizes the former in describing the goals of transitional justice

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26. Our definition builds on Ruti Teitel’s definition as “that conception of justice associated with periods of political change.” Ruti Teitel, *The Law and Politics of Contemporary Transitional Justice*, 38 CORNELL INT’L L.J. 837, 837 (2005). We appreciate the simplicity of Teitel’s definition but clarify that we see two distinctive features of transitional justice mechanisms: (1) they are generally designed with the intent of promoting a major societal change from the past – not only political but often social – (2) following periods of upheaval or crisis.
27. See Ronen Steinberg, *Transitional Justice in the Age of the French Revolution*, 7 INT’L J. TRANSITIONAL JUST. 267, 267 (2013).
28. See Adriaan Lanni, *Transitional Justice in Ancient Athens: A Case Study*, 32 U. PA. J. INT’L L. 551, 551 (2010).
29. See MARCOS ZUNINO, *JUSTICE FRAMED: A GENEALOGY OF TRANSITIONAL JUSTICE* 96 (2019) (“Post-communist transitional justice was liberal because it openly supported capitalism as the best economic system.”).
30. Augustine S.J. Park, *Settler Colonialism, Decolonization and Radicalizing Transitional Justice*, 14 INT’L J. TRANSITIONAL JUST. 260, 262 (2020); see also Dustin N. Sharp, *Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition*, 9 INT’L J. TRANSITIONAL JUST. 150, 163–64 (2015) (questioning the assumption that “liberal democracy and capitalism . . . are somehow a unique pathway to grappling with legacies of violent conflict”).

as aiming “to provide recognition to victims . . . as a step towards reconciliation.”³¹ Other organizations focus on the punitive and deterrent functions of transitional justice. For example, the United States Federal Judicial Center, the education and research agenda of the federal courts, describes transitional justice as a means for “empower[ing] societies to hold bad actors accountable while developing preventative strategies against future atrocities.”³² Fundamental disagreements about the goals of transitional justice programs make it difficult to evaluate their success or failure.

Setting aside the normative debate over the goals of transitional justice, a focus on transitions from authoritarianism to democracy has excluded important cases from the field. Except for a few recent studies that analyze the United States and other democracies through a transitional justice lens,³³ democracies that commit atrocities or experience episodes of authoritarianism are largely outside the scope of the field. Recognizing these limitations, some scholars have argued for broadening the concept of “transition” beyond its origins in the democratization literature to include other forms of political change.³⁴ Others advocate for an approach that is agnostic about the normative goals of transitional justice in order to consider cases outside what Christine Carpenter describes as “the traditional canon of transitional justice.”³⁵ In recent years, for example, researchers have examined historical developments in China and other countries in the Asia-

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31. OHCHR: *Transitional Justice and Human Rights*, U.N. OFF. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/transitional-justice> [<https://perma.cc/4T9H-GMGK>].
 32. *Transitional Justice*, FED. JUD. CTR., <https://judiciariesworldwide.fjc.gov/transitional-justice> [<https://perma.cc/36P4-Z72L>].
 33. See, e.g., Judith Resnik, *Courts: A Template and a Site of Transitional Justice Collapsing as a Model*, in *THE OXFORD HANDBOOK OF TRANSITIONAL JUSTICE* (Jens Meierhenrich, Alexander Hinton & Lawrence Douglas eds., 2024).
 34. See Teitel, *supra* note 26, at 837-38 (questioning the literature’s presumed goal of “transitions to democracy” and noting that “the democratization goal is often in tension with other aspirations identified here, such as the new focus on conflict resolution and reconciliation”).
 35. See Christine Carpenter, *Reconsidering Transitional Justice: Revolutions and Regime Change in 20th-Century China*, 20 J. INT’L CRIM. JUST. 597, 601 (2022) (citing Nuremberg and South Africa as two examples of transitional justice that have been particularly influential in shaping this “canon”).

Pacific through a transitional justice lens.³⁶ We endorse these broader understandings of transitional justice in our own definition above.³⁷

Beyond debates over the field's origins and scope, conceptual confusion around transitional justice is exacerbated by its overlap with two other fields that developed in parallel: restorative justice and transformative justice. Restorative justice emerged in the 1970s with efforts to repair relationships between victims and offenders at the community level through mediation and other alternatives to judicial punishment. Transformative justice emerged in the 1990s in response to concerns that the older field of restorative justice did not provide tools to address the structural causes of injustice.³⁸ Transformative justice seeks to change social systems by developing alternatives to criminal justice and addressing the root causes of conflict, violence, and crime, like socioeconomic conditions and structural inequalities. Both literatures, to a large extent, center the United States and its criminal-justice system. The field of transitional justice, by contrast, historically had a broader comparative and international scope. Today, however, the boundaries between the three fields have blurred. Many scholars of transitional justice are turning their attention to the United States to study persistent legacies of racial injustice and the American Civil War.³⁹ The concepts of restorative and transformative justice are also increasingly cited in studies of post-conflict and

36. See, e.g., Franklin Barr Lebo, *Proposing a New Framework: Including China on the Crossroads of Transitional Justice and Reconciliation*, 1 *ASIAN J. COMPAR. POL.* 171, 171 (2016) (arguing that broader concepts of “transition” and “justice” are “necessary to press the transitional justice literature toward a more theoretically driven evaluation of conflict transformation and reconciliation policies”); Carpenter, *supra* note 35, at 599 (seeking “to deconstruct the concept of transitional justice, and the teleological associations it contains,” referring to the presumed goal of democratization); Renée Jeffery & Hun Joon Kim, *Introduction: New Horizons: Transitional Justice in the Asia-Pacific*, in *TRANSITIONAL JUSTICE IN THE ASIA-PACIFIC* 1, 2 (Renée Jeffery & Hun Joon Kim eds., 2013) (noting that the Asia-Pacific “has attracted decidedly less scholarly attention than Latin America, Africa, and Eastern Europe” despite transitional justice being “similarly prevalent” in the region).

37. See *supra* note 26 and accompanying text.

38. Anthony J. Nocella II, *An Overview of the History and Theory of Transformative Justice*, 6 *PEACE & CONFLICT REV.* 1, 4 (2011).

39. Zinaida Miller, *The Injustices of Time: Rights, Race, Redistribution, and Responsibility*, 52 *COLUM. HUM. RTS. L. REV.* 647, 682-84 (2021); Yuvraj Joshi, *Affirmative Action as Transitional Justice*, 2020 *WIS. L. REV.* 1, 37-38; Daniel Posthumus & Kelebogile Zvobgo, *Democratizing Truth: An Analysis of Truth Commissions in the United States*, 15 *INT'L J. TRANSITIONAL JUST.* 510, 529-31 (2021).

postatrocity transitions in wide-ranging contexts, including Uganda,⁴⁰ Bosnia-Herzegovina,⁴¹ and Peru.⁴²

B. Overview of Transitional Justice Mechanisms

Scholarship in the field of transitional justice has primarily focused on the investigation of policies or mechanisms that have been adopted in conflict-affected and post-authoritarian societies. This Section describes such policies and mechanisms, highlighting their application in noteworthy cases and discussing their limitations.

1. Criminal Prosecutions: Domestic, International, and Hybrid

Criminal prosecutions seek to establish individual responsibility for violations of domestic or international criminal laws, and to punish the perpetrators accordingly.⁴³ In the transitional justice context, criminal prosecutions fall into three major categories: domestic, international, and hybrid.

Domestic prosecutions by national courts or ad hoc tribunals, such as the trial of Saddam Hussein in Iraq, are a common form of transitional justice. Domestic prosecutions are more consistent with rule-of-law and human-rights principles than extrajudicial mechanisms (such as “rough justice,” summary executions, or vigilantism⁴⁴) but are still subject to several concerns. Domestic trials may be politicized in contexts where a new regime or winner of a conflict uses transitional justice mechanisms to punish less powerful opponents, a phenomenon that is sometimes described as “victor’s justice.”⁴⁵ Systemic corruption and limited state capacity, which are common problems in transitioning states, often

40. Erin Baines & Camile Oliveira, *Securing the Future: Transformative Justice and Children “Born of War,”* 30 SOC. LEGAL STUD. 341, 344-46 (2021).

41. Daniela Lai & Caterina Bonora, *The Transformative Potential of Post-War Justice Initiatives in Bosnia and Herzegovina*, in TRANSITIONAL AND TRANSFORMATIVE JUSTICE: CRITICAL AND INTERNATIONAL PERSPECTIVES 54-76 (Matthew Evans ed., 2019).

42. Rebekka Friedman, *Implementing Transformative Justice: Survivors and Ex-Combatants at the Comisión de la Verdad y Reconciliación in Peru*, 41 ETHNIC & RACIAL STUD. 701, 711-14 (2018).

43. U.S. INST. OF PEACE, TRANSITIONAL JUSTICE: INFORMATION HANDBOOK 3 (2008).

44. See Vinjamuri & Snyder, *supra* note 2, at 311 (discussing various “informal accountability measures”).

45. Pablo de Greiff (Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence), *Rep. of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Pablo de Greiff, ¶ 65, U.N. Doc. A/HRC/27/56 (Aug. 27, 2014).

raise questions about the fairness, efficiency, and effectiveness of domestic prosecutions.⁴⁶

International mechanisms, such as the Nuremberg and Tokyo trials after World War II, and the ICC, were designed to address limitations of domestic courts. Proponents argue that international criminal-justice mechanisms have several advantages, including more neutrality than domestic justice systems.⁴⁷ International mechanisms may also benefit from more resources and technical expertise than domestic alternatives, particularly in contexts where state capacity has been weakened by war or where formerly authoritarian institutions need reforms. International prosecutions also seek to uphold universal human-rights principles that are often violated by national courts, such as the rights of the accused to fair trials and humane treatment.

However, international prosecutions have their own pitfalls. A key concern is that these mechanisms are, by definition, designed and led by international elites: judges, lawyers, and legal academics who are experts in international criminal law but may lack deep knowledge of the local contexts they are tasked with investigating. Many international tribunals are located outside of the jurisdictions where crimes were committed, which contributes to the detachment of the mechanisms from the locals, in addition to making it very difficult to find witnesses and collect evidence.⁴⁸ For example, the international tribunals for Rwanda and the former Yugoslavia were criticized for being dominated by international elites without sufficient consultation with local experts and stakeholders.⁴⁹

46. See Noha Aboueldahab, *Transitional Justice as Repression and Resistance: Practices in the Arab World*, 21 J. INT'L CRIM. JUST. 701, 712 (2023) ("Weak, corrupt and heavily politicized national judiciaries are a major reason that transitional justice actors seek out universal jurisdiction opportunities.").

47. Abdul Tejan-Cole, *The Special Court for Sierra Leone: Conceptual Concerns and Alternatives*, 1 AFR. HUM. RTS. L.J. 107, 123 (2001) (noting that international tribunals, in comparison with domestic courts, are perceived as "less destabilizing to fragile governments, are less likely to cede to short-term objectives of national politics, can count on the expertise of jurists who are better qualified . . . , are more impartial than proceedings adjudicated by national judges . . . , are more likely to be respected by national authorities, . . . and can render more uniform justice" (quoting José E. Alvarez, *Crimes of States/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT'L L. 365, 375 (1999))).

48. Jacob Katz Cogan, *The Problem of Obtaining Evidence for International Criminal Courts*, 22 HUM. RTS. Q. 404, 405-06 n.4 (2000) (discussing the difficulties faced by the ICTY in calling witnesses and gathering evidence in the *Tadic* case).

49. See, e.g., Toshihiro Abe, *Perceptions of the Khmer Rouge Tribunal Among Cambodians: Implications of the Proceedings of Public Forums Held by a Local NGO*, 21 S.E. ASIA RSCH. 5, 6 (2013) ("The international tribunals for Rwanda and the former Yugoslavia, for example, have been criticized repeatedly for their lack of mechanisms for local ownership."); see also Rosemary

Another concern is that international prosecutions may not be more neutral than domestic prosecutions. Even though the stated objective of the Nuremberg trials was to “stay the hand of vengeance,”⁵⁰ scholars have come to view these trials as cautionary examples of “victor’s justice”⁵¹ and even “travesties of justice.”⁵² International criminal law’s focus on individual criminal responsibility contributes to this problem. It is impossible to investigate and prosecute all alleged perpetrators of large-scale atrocities comprehensively given the limited time and resources. As a result, international trials are inherently selective and incomplete.⁵³ For instance, the ICC has been widely criticized for its selective prosecution of war crimes in Africa, while the United States, Israel, and other powerful states have repeatedly resisted calls to prosecute individual members of their own militaries who have been accused of war crimes.⁵⁴

“Hybrid” tribunals and courts have “mixed composition and jurisdiction, encompassing both national and international aspects, usually operating within the jurisdiction where the crimes occurred.”⁵⁵ An important feature of hybrid tribunals is their inclusion of national judges working alongside international judges.⁵⁶ Although hybrid courts were designed to address the critiques and limitations of both domestic and international prosecutions, they have raised new

Nagy, *Transitional Justice as Global Project: Critical Reflections*, 29 *THIRD WORLD Q.* 275, 275 (2008) (noting that transitional justice is “[s]teeped in Western liberalism, . . . often located outside the area where conflict occurred, . . . [and] may be alien and distant to those who actually have to live together after atrocity”).

50. See 2 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945–1 OCTOBER 1946, at 99 (1947) (statement of Justice Robert H. Jackson, Chief Prosecutor, United States).
51. See Kathryn Sikkink & Hun Joon Kim, *The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations*, 9 *ANN. REV. L. & SOC. SCI.* 269, 275 (2013) (citing the post-World War II Nuremberg and Tokyo trials as examples of international tribunals that faced “accusations of victor’s justice”).
52. See MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 27 (1998) (noting that the Nuremberg and Tokyo trials have been “condemned by many as travesties of justice, the spoils of the victors of war”).
53. See *id.* (referring to the Nuremberg and Tokyo trials’ “selective prosecution of individuals for acts more properly attributable to governments themselves”).
54. See Thomas Christiano, *The Problem of Selective Prosecution and the Legitimacy of the International Criminal Court*, 54 *J. SOC. PHIL.* 471, 471 (2021); ROBERT CRYER, *PROSECUTING INTERNATIONAL CRIMES: SELECTIVITY AND THE INTERNATIONAL CRIMINAL LAW REGIME* 191–231 (2005); OUMAR BA, *STATES OF JUSTICE: THE POLITICS OF THE INTERNATIONAL CRIMINAL COURT* 159 (2020).
55. OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., *RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: MAXIMIZING THE LEGACY OF HYBRID COURTS*, at 1, U.N. Doc. HR/PUB/08/2, U.N. Sales No. E.08.XIV.2 (2008).
56. See Laura A. Dickinson, *The Promise of Hybrid Courts*, 97 *AM. J. INT’L L.* 295, 295 (2003) (referring to “[f]oreign judges sit[ting] alongside their domestic counterparts”).

concerns about the appropriate balance between international and national experts.⁵⁷ The former usually outnumber the latter. Hybrid courts also introduce the potential for resentment and tensions between international staff and their domestic counterparts, who are often paid much less to do the same work.⁵⁸

Finally, a critique that applies to all criminal-justice mechanisms – whether domestic, international, or hybrid – is their inherent focus on the punishment of perpetrators. Proponents of “victim-centered” approaches to justice increasingly question this punitive objective.⁵⁹ Alternative approaches focus on remedies such as compensation and reparations, which are discussed below.

2. *Reparations and Compensation*

Reparations and compensation mechanisms seek to repair harms caused by past violations of human rights by providing material benefits to victims. Reparations may include monetary compensation or in-kind benefits (e.g., free or subsidized healthcare or education benefits), as well as symbolic benefits like official apologies or the construction of monuments and museums.⁶⁰ Given time and resource constraints, transitional justice efforts require tradeoffs between holding perpetrators accountable through prosecutions and providing remedies for victims.⁶¹ Surveys and interviews with victims indicate that reparations and compensation are often foremost among their demands.⁶² However, reparations and compensation programs are difficult to implement because they are so costly

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57. *Id.* at 296 (describing hybrid courts as “being squeezed from both sides” by critics who view them as either too international or too national).
58. See Beth Van Schaack, *The Building Blocks of Hybrid Justice*, 44 DENV. J. INT’L L. & POL’Y 169, 240 (2016) (“Two-tiered salary structures and the unequal allocation of other emoluments may generate tensions between international and domestic staff, particularly when the international salaries or perquisites vastly exceed those of their local counterparts.”).
59. See, e.g., Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L. 335, 339 (2006) (describing “traditional criminal justice” as “perpetrator-centric”).
60. See U.S. INST. PEACE, *supra* note 43, at 3.
61. Nancy Amoury Combs, *From Prosecutorial to Reparatory: A Valuable Post-Conflict Change of Focus*, 36 MICH. J. INT’L L. 219, 219–20 (2015) (raising the question, “What if, instead of devoting millions upon millions of dollars to prosecuting those who commit international crimes, the international community used those resources to compensate victims?”).
62. See, e.g., *Transitional Justice National Survey: A Report on the People’s Perceptions and Recommendations*, ZIM. HUM. RTS. NGO F. 9, 18 tbl.13 (2011), <https://ntjwg.uwazi.io/api/files/1549887214540w31xvrq4yl.pdf> [<https://perma.cc/W3TW-YTRP>] (discussing a survey of 3,189 respondents in Zimbabwe, which found that compensation was the most common response – offered by forty-nine percent of respondents – to the question, “What do you think must be done to help victims of past abuses?”).

and labor intensive.⁶³ Historically, many programs provided benefits to individual victims based on proof of specific harms suffered. More recent programs have provided benefits to all members of a historically oppressed group (e.g., U.S. reparations for survivors of Japanese internment during World War II).

Other challenges include the need for political will to implement reparations, as well as practical questions about the scope and magnitude of reparations, the source of funding, the eligibility criteria, the level of documentation and evidence necessary to receive benefits, and the level of monetary compensation that is appropriate for harms that many victims feel are impossible to quantify. In some contexts, victims may perceive offers of monetary compensation for severe harms, such as wrongful killing of loved ones, as insulting.⁶⁴ For example, a number of Iraqi and Afghan civilians have reportedly rejected offers of “condolence payments” from the U.S. military as compensation for deaths, injuries, and property destruction caused by airstrikes, citing the incommensurability of the amounts offered with the magnitude of harm suffered, as well as the United States’s refusal to apologize or acknowledge wrongdoing.⁶⁵ Studies suggest that compensation may be perceived as fairer when it is accompanied by an apology.⁶⁶

In some contexts, concerns about “fake victims” making disingenuous claims undermine the perceived legitimacy of compensation processes and fuel grievances among actual victims.⁶⁷ A related concern is the potential for resentment and competition between different groups of victims in cases where some groups

63. See U.S. INST. OF PEACE, *supra* note 43, at 3.

64. See Joanna Naples-Mitchell, *Condolence Payments for Civilian Casualties: Lessons for Applying the New NDAA*, JUST SEC. (Aug. 28, 2018), <https://www.justsecurity.org/60482/condolence-payments-civilian-casualties-lessons-applying-ndaa> [https://perma.cc/UL43-7RWT] (quoting an Iraqi civilian who described the offer of a \$15,000 condolence payment as “an insult to me” and refused to accept it).

65. *Id.*

66. See, e.g., Tessa Haesevoets, Chris Reinders Folmer, David De Cremer & Alain Van Hiel, *Money Isn't All that Matters: The Use of Financial Compensation and Apologies to Preserve Relationships in the Aftermath of Distributive Harm*, 35 J. ECON. PSYCH. 95, 102-05 (2013) (finding that “undercompensation” (an amount less than the perceived harm) is perceived by victims as fairer when accompanied by an apology).

67. See, e.g., Peter Dixon, *Reparations and the Politics of Recognition*, in CONTESTED JUSTICE: THE POLITICS AND PRACTICE OF INTERNATIONAL CRIMINAL COURT INTERVENTIONS 326, 344-45 (2015) (referring to concerns that “fake victims” were undermining the legitimacy of the International Criminal Court’s (ICC) prosecution of Thomas Lubanga Dyilo for war crimes in the Democratic Republic of Congo); Opinion, *TRC Will Not Look into the Cases Sub-Judice at the Court*, KATHMANDU POST (Aug. 3, 2015), <https://kathmandupost.com/opinion/2015/08/03/trc-will-not-look-into-the-cases-sub-judice-at-the-court> [https://perma.cc/PKP7-XAPF] (presenting the transcript of an interview with the chairperson of Nepal’s TRC, who reported that “real victims” have complained about “fake victims . . . collecting relief in their names”).

are prioritized over others. For example, in Iraq, new legislation providing compensation for Yazidis and other religious- and ethnic-minority groups targeted by the Islamic State of Iraq and the Levant (ISIL) may be perceived as unfair by neighboring Sunni Arab communities.⁶⁸ Many Sunni Arabs also suffered enormous material, physical, and emotional harms during the conflict and consider themselves to be victims but are widely perceived by Yazidis as collaborators.⁶⁹

3. *Truth and Reconciliation Commissions*

Truth commissions are officially organized bodies tasked with gathering evidence about historical patterns of rights violations. The objective of a truth commission is to establish the facts, causes, and consequences of past abuses with the longer-term goal of preventing recurrence. Unlike criminal prosecutions, truth commissions do not directly punish individual perpetrators and are considered more “victim-centered.” Historically, truth commissions relied on documentary evidence, including archives⁷⁰ recovered from previous regimes and testimonies of victims, perpetrators, and witnesses.⁷¹ These sources remain central to the work of contemporary truth commissions. In Colombia, for instance, the recently completed Commission for the Clarification of Truth, Coexistence and Non-Repetition collected close to 30,000 testimonies.⁷² In recent years, truth commissions have used new technologies and methods to analyze a broader range of data sources, including social media, audiovisual files,⁷³ and forensic

68. See Yazidi Female Survivors Law No. 8 of 2021 (Iraq).

69. Azam Ahmed, *Betrayal of Yazidis Stokes Iraqi Fears of Return to 2006 Sectarian Horrors*, N.Y. TIMES (Aug. 26, 2014), <https://www.nytimes.com/2014/08/27/world/middleeast/iraq-isis-yazidis-kurds-sunni-arabs.html> [https://perma.cc/X9VG-RUZ4] (quoting a Yazidi man who survived the Islamic State of Iraq and the Levant’s (ISIL) attack on Mount Sinjar, and said that “our Arab neighbors turned on all of us. . . . We feel betrayed. They were our friends”).

70. See, e.g., JULIA VIEBACH, DAGMAR HOVESTÄDT & ULRIKE LÜHE, *BEYOND EVIDENCE: THE USE OF ARCHIVES IN TRANSITIONAL JUSTICE* 2-3 (2022) (explaining how archives have been used in a variety of truth commissions and trials).

71. See, e.g., Juan Carlos Urquidi Herrera, *Victims’ Testimonies in Truth Commissions: Who Owns the Memory?*, 20 OR. REV. INT’L L. 79, 84-85 (2018) (discussing the use of oral testimonies of victims across many truth commissions); Kelebogile Zvobgo, *Designing Truth: Facilitating Perpetrator Testimony at Truth Commissions*, 18 J. HUM. RTS. 92, 103 (2019) (discussing the use of perpetrator testimony in truth commissions).

72. *The Legacy of the Truth Commission of Colombia*, INT’L CATALAN INST. FOR PEACE (Nov. 4, 2022, 6:00 PM), <https://www.icip.cat/en/event/the-legacy-of-the-truth-commission-of-colombia> [https://perma.cc/W46N-NXUY].

73. Denisa Kostovicova, Rachel Kerr, Ivor Sokolić, Tiffany Fairey, Henry Redwood & Jelena Subotić, *The “Digital Turn” in Transitional Justice Research: Evaluating Image and Text as Data in the Western Balkans*, 70 COMP. SE. EUR. STUD. 24, 24-26 (2022).

evidence.⁷⁴ Truth commissions usually result in a public report with findings and recommendations for reform, accountability, and the prevention of recurrence.

The first well-known truth commission was established in Argentina in 1983 by the first democratically elected president after seven years of military dictatorship to investigate disappearances under the former regime.⁷⁵ It was followed by truth commissions in South Africa (1995–2002), Guatemala (1997–1999), and Peru (2001–2003), among others.⁷⁶ These early truth commissions were created in countries emerging from civil war or undergoing transitions from authoritarianism to democracy. As the field of transitional justice broadened to include a wider range of regime types and regions,⁷⁷ stable democracies are increasingly using truth commissions to investigate their own past abuses. Examples include Canada's Truth and Reconciliation Commission (TRC), which was tasked with documenting the history and legacies of the Indian residential-school system on Indigenous students and their families.⁷⁸ Canada's TRC released its final report in 2015 based on more than eight years of investigation, prompting the launch of a similar truth-seeking inquiry into the United States's Indian boarding-school system, which operated from 1819 until late 1969.⁷⁹

Empirical studies of truth commissions find some evidence of their positive effects on outcomes including democratic participation, states' respect for human rights,⁸⁰ and emotional benefits for victims, such as recognition, catharsis,

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74. Iosif Kovras, *Technologies of Justice: Forensics and the Evolution of Transitional Justice*, 29 EUR. J. INT'L RELS. 29, 37 (2023).
 75. Fabian Bosoer & Federico Finchelstein, Opinion, *Argentina's Truth Commission at 30*, AL JAZEERA AM. (Jan. 19, 2014, 7:00 AM ET), <http://america.aljazeera.com/opinions/2014/1/argentina-conadeptruthcommissionhumanrights.html> [<https://perma.cc/24JZ-6AXV>].
 76. Truth commission dates of operation are accessed from the Truth Commission Digital Collection at the U.S. Institute of Peace. See *Truth Commission Digital Collection*, U.S. INST. PEACE (Mar. 16, 2011), <https://www.usip.org/publications/2011/03/truth-commission-digital-collection> [<https://perma.cc/2QAJ-5BH6>].
 77. See *supra* Section I.A.
 78. *Truth and Reconciliation Commission of Canada*, GOV'T CAN., <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525> [<https://perma.cc/N3MY-9487>].
 79. *Hearing on Volume 1 of the Department of the Interior's Federal Indian Boarding School Initiative Investigative Report and S. 2907 Before the S. Comm. on Indian Affs.*, 117th Cong. 10 (2022) (statement of Deb Haaland, Sec'y of the Interior).
 80. Geoff Dancy & Oskar Timo Thoms, *Do Truth Commissions Really Improve Democracy?*, 55 COMP. POL. STUD. 555, 569, 576 (2021) (presenting a quantitative analysis of a cross-national dataset of fifty-one truth commissions in thirty-six countries and finding that the presence of a truth commission is associated with a fifteen-percentage-point increase in indicators of democratic participation and a nineteen-percentage-point decrease in state repression).

and affirmation of their agency and human dignity.⁸¹ However, truth commissions raise a number of concerns including the potential for retraumatization or instrumentalization of victims and witnesses as “pawns” by investigators who prioritize the extraction of information over safety and dignity concerns.⁸² A study based on interviews with South African survivors of apartheid found that less than one-third described the experience of testifying as positive, and two-thirds found their experience at the truth commission to be painful and disempowering.⁸³ A related concern is that truth commissions are inherently political, but they are not democratic institutions.⁸⁴ Truth commissions can be politicized by the new regime or victors of conflict in order to punish or settle scores with opponents, construct a selective or biased historical narrative, or achieve other strategic objectives that may be inconsistent with the best interests of victims.⁸⁵ Finally, the design of truth commissions has been influenced by Christian beliefs about the cathartic and healing benefits of confession, which are not necessarily universal.⁸⁶

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81. Victor Espinoza Cuevas, María Luísa Ortiz Rojas & Paz Rojas Baeza, *Truth Commissions: An Uncertain Path? Comparative Study of Truth Commissions in Argentina, Chile, El Salvador, Guatemala and South Africa from the Perspectives of Victims, Their Relatives, Human Rights Organizations and Experts*, ETH ZÜRICH CTR. FOR SEC. STUD. 21, 34 (Jan. 2002), https://www.files.ethz.ch/isn/103018/Truth_Comm_Executive_Summary.pdf [<https://perma.cc/VD54-M6QN>] (finding that participation in truth commissions was “a form of catharsis” for victims in Guatemala and El Salvador, and that “the official recognition of the truth was fundamental . . . because this had never happened in their history and now dignified them”).
82. Rosette Muzigo-Morrison, *Victims and Witnesses in Fact-Finding Commissions: Pawns or Principal Pieces?*, in *THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING* 175, 179 (Philip Alston & Sarah Knuckey eds., 2016) (noting that investigators have been criticized for “put[ting] obtaining information above security concerns” as well as above the privacy and dignity of witnesses and victims).
83. Catherine C. Byrne, *Benefit or Burden: Victims’ Reflections on TRC Participation*, 10 *PEACE & CONFLICT: J. PEACE PSYCH.* 237, 243-46 (2004).
84. Nir Eisikovits, *Rethinking the Legitimacy of Truth Commissions: “I Am the Enemy You Killed, My Friend.”* 37 *METAPHILOSOPHY* 489, 492 (2006) (“A truth commission is not a democratic institution but, rather, an institution that is meant to facilitate the transition of a society to democracy.”).
85. Iosif Kovras, Shaun McDaid & Ragnar Hjalmarsson, *Truth Commissions After Economic Crises: Political Learning or Blame Game?*, 66 *POL. STUD.* 173, 188 (2018) (describing truth commissions as “ideal instruments of symbolic politics, or *realpolitik*, for politicians seeking to establish expedient narratives and settle old scores”).
86. See, e.g., Rebecca C. Bartel, *Confession and the Anthropology of Forgiveness: Reflections on Colombia’s Processes of Transitional Justice*, 24 *J. LATIN AM. & CARIBBEAN ANTHROPOLOGY* 145, 146, 152-53 (2019) (arguing that “the Christian notion of confession,” which links forgiveness to purification through atonement influenced the design of Colombia’s transitional justice process, had “problematic” and sometimes “devastating” consequences for Colombian victims);

4. *Amnesties and Pardons*

Amnesty policies provide individuals or groups with immunity from legal prosecution. The objective of these policies is typically to create incentives for combatants to surrender in the midst of armed conflict or to provide pathways for former combatants to reintegrate into society after conflicts end, through disarmament, demobilization, and reintegration (DDR) programs. Amnesties have been adopted in a variety of contexts, from El Salvador to Mozambique to Afghanistan.

Some legal scholars argue, however, that amnesties should only be a “tool of last resort.”⁸⁷ Many scholars and policymakers question whether amnesties are effective long-term policies, given that they fail to hold perpetrators accountable for historical injustices. Studies of South Africa’s TRC have found that many victims of apartheid felt “betrayed” by the TRC’s granting of amnesty to perpetrators without requiring any admission of wrongdoing or expression of remorse, which they perceived as “perpetrator-friendly.”⁸⁸

Evidence that amnesty policies contribute to conflict resolution is also mixed. Conventionally, amnesty policies were believed to be an important bargaining chip to bring different sides to the negotiating table, particularly when the losing party is still relatively powerful. Jack Snyder and Leslie Vinjamuri, for instance, argue that amnesties are an “indispensable tool in reaching peace settlements when perpetrators remain strong.”⁸⁹ However, in a study of 297 conflict amnesties, Geoff Dancy finds that amnesty policies are actually more effective when they are issued after conflicts have ended and peace negotiations have started rather than while conflicts are still ongoing.⁹⁰

BERT INGELAERE, *INSIDE RWANDA’S GACACA COURTS: SEEKING JUSTICE AFTER GENOCIDE 3* (2016) (arguing that many truth commissions have been based on “Western assumptions that establishing the truth would lead to spiritual or Christian redemption”).

87. Michael P. Scharf, *The Amnesty Exception to the Jurisdiction of the International Criminal Court*, 32 CORNELL INT’L L.J. 507, 512 (1999) (“[A]mnesty should be a bargaining tool of last resort reserved only for extreme situations.”).
88. Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, 2 J. HUM. RTS. PRAC. 208, 214–215 (2010) (noting that victims “repeatedly point out that the TRC was a ‘perpetrator-friendly’ process; it betrayed victims in that the promises regarding reparations and truth recovery were never met; and they felt that they were forced to forgive perpetrators while perpetrators and beneficiaries of the apartheid system did not show any remorse”).
89. Jack Snyder & Leslie Vinjamuri, *Trials and Errors: Principle and Pragmatism in Strategies of International Justice*, 28 INT’L SEC. 5, 39 (2004).
90. Geoff Dancy, *Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace*, 72 INT’L ORG. 387, 416 (2018) (“[A]mnesties work better if they are enacted in the negotiation phase. During conflict, amid the prenegotiation phase, both sides face problems of adverse selection, or lack of information on their opponent’s preferences for peace.”).

5. *Apologies*

Apologies, in the form of official public statements, are issued by perpetrators of violence to acknowledge past wrongdoings. Studies in Northern Ireland⁹¹ and the Czech Republic,⁹² for instance, demonstrate that apologies are often viewed favorably by the public and could be effective, low-cost mechanisms to promote post-conflict reconciliation.

However, apologies are sometimes criticized as being symbolic, superficial, or insufficient. Following the Japanese occupation of Korea, the Japanese government issued multiple apologies to the Korean public. A 2022 study found that many of these apologies had not been well received by Koreans because Japanese officials often did not directly acknowledge wrongdoing.⁹³

Apologies can also be seen as “too little, too late” if they are not issued by the perpetrators most directly involved in causing harm, or if they are issued many years after communities were subject to atrocities.⁹⁴ Official apologies from the U.S. government to Japanese Americans for their internment during World War II (1939-1945)⁹⁵ and from the United Kingdom to Northern Ireland for the “Bloody Sunday” massacre (1972)⁹⁶ only came many decades later. New research further suggests that, in some cases, apologies can spur domestic backlash. In a recent study of political apologies in Japan and the United States, Risa Kitagawa and Jonathan A. Chu show that certain subgroups of citizens, such as those who

91. Anna Bryson & Muiris MacCarthaigh, *Accounting for the Past: The Role of Public Apologies in Ireland*, 37 IRISH POL. STUD. 571, 571 (2022).

92. Roman David & Susanne Y.P. Choi, *Forgiveness and Transitional Justice in the Czech Republic*, 50 J. CONFLICT RESOL. 339, 339 (2006).

93. Victoria Wai Lan Yeung & Roman David, *Apology Mismatch: An Experimental Approach to Japan's Apologies to Korea*, 26 ASIAN J. SOC. PSYCH. 301, 301 (2023) (“Japan has issued numerous apologies to Korea, which however failed to resonate with the Korean public. . . . Koreans viewed admission of wrongdoing as an essential and the most demanded component of apology . . .”).

94. See, e.g., JENNIFER LIND, SORRY STATES: APOLOGIES IN INTERNATIONAL POLITICS 2 (2008) (contrasting German and Japanese apologies after World War II and noting that “Tokyo’s apologies have been perceived as too little, too late”).

95. Katherine Bishop, *Day of Apology and ‘Sigh of Relief’*, N.Y. TIMES (Aug. 11, 1988), <https://www.nytimes.com/1988/08/11/us/day-of-apology-and-sigh-of-relief.html> [<https://perma.cc/J43E-P6XW>].

96. Henry McDonald, Owen Bowcott & Helene Mulholland, *Bloody Sunday Report: David Cameron Apologises for ‘Unjustifiable’ Shootings*, THE GUARDIAN (June 15, 2010 12:47 EDT), <https://www.theguardian.com/uk/2010/jun/15/bloody-sunday-report-saville-inquiry> [<https://perma.cc/F3YP-E2QH>].

are highly nationalistic or politically conservative, are significantly less likely to approve of their government issuing an official apology to another country.⁹⁷

6. *Vetting* (“*Lustration*”)

Vetting—sometimes referred to as “lustration”—refers to the removal or exclusion of a former regime’s personnel from government service, often during a period of democratic transition. The term “lustration” is primarily associated with post-Soviet Central and Eastern Europe, where nascent democratic governments determined what the state would do with personnel who served in the communist regimes.⁹⁸ The term was also used in the post-Arab Spring context to describe laws enacted by Libya and Tunisia that barred former ruling-party members from running for office.⁹⁹

Lustration and vetting laws vary in their objectives. Some processes, like those adopted by the Czech Republic, focus on sweeping dismissals of personnel who served in the previous system. These dismissals are sometimes referred to as “purges,” a term with negative connotations associated with “victor’s justice.”¹⁰⁰ Other lustration processes, like those adopted by Poland, are more reconciliatory. Government personnel may still be included in the state apparatus provided that they agree to conditions such as participation in a truth-seeking process.¹⁰¹

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97. Risa Kitagawa & Jonathan A. Chu, *The Impact of Political Apologies on Public Opinion*, 73 *WORLD POL.* 441, 461 (2021) (noting that “individuals who are highly nationalistic, highly social-dominance oriented, or conservative are less likely than others to reward their government for apologizing to another state” and “may even react negatively”).
98. See, e.g., MONIKA NALEPA, *SKELETONS IN THE CLOSET: TRANSITIONAL JUSTICE IN POST-COMMUNIST EUROPE* (2010) (discussing “lustration” following the overthrow of the communist regimes in Poland, Hungary, and Czechoslovakia).
99. See, e.g., Mark Kersten, *Libya’s Political Isolation Law: Politics and Justice or the Politics of Justice?*, *MIDDLE E. INST.* (Feb. 5, 2014), <https://www.mei.edu/publications/libyas-political-isolation-law-politics-and-justice-or-politics-justice> [<https://perma.cc/BLS9-HJVW>]; NIMER SULTANY, *LAW AND REVOLUTION: LEGITIMACY AND CONSTITUTIONALISM AFTER THE ARAB SPRING* 217 (2017).
100. See Cynthia M. Horne, *Transitional Justice: Vetting and Lustration*, in *RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE* 424, 426 (Cheryl Lawther, Luke Moffett & Dov Jacobs eds., 2017) (“[P]urges are often framed as instruments of backward-looking justice, retribution or victor’s justice.”).
101. See ROMAN DAVID, *LUSTRATION AND TRANSITIONAL JUSTICE: PERSONNEL SYSTEMS IN THE CZECH REPUBLIC, HUNGARY, AND POLAND*, at ix (2011) (“While Czechoslovakia and other countries purged their administrations of the remnants of previous regimes, Hungary and Poland . . . adopted methods based on truth revelation and confession that were stipulated as conditions for inclusion.”).

Lustration policies are frequently criticized for doing either “too little” or “too much” in the aftermath of regime change. On the one hand, failing to remove personnel fully from the state apparatus can result in culpable officials retaining power. For example, when Romania’s parliament finally adopted a lustration law in 2012 more than twenty-two years after the fall of the Soviet Union, victims viewed it as “too little, too late.”¹⁰² On the other hand, excluding large swaths of society from a new government can generate resentment and resistance. Following the collapse of Saddam Hussein’s regime in Iraq, the transitional government established by the U.S.-led coalition mandated a process of “de-Ba’athification,” which was at least partially inspired by the “de-Nazification” program established in Germany after World War II.¹⁰³ The de-Ba’athification policy permanently excluded most former Iraqi government and military personnel from public-sector employment¹⁰⁴ and was perceived by Sunni Arabs as collective punishment. Many scholars argued that the policy backfired by alienating Sunni Arabs and fueling sectarian tensions. Coupled with the dissolution of the Iraqi military, Sunni Arabs’ grievances with de-Ba’athification and subsequent political and economic marginalization by the post-2003 Shia-dominated government likely contributed to the al-Qaeda insurgency and the eventual rise of its successor, ISIL.¹⁰⁵

7. Customary, Religious, Traditional, and Other Community-Based Justice Mechanisms

Customary, religious, traditional, and other community-based justice mechanisms may provide alternatives to the formal justice systems administered by

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102. Marian Chiriac, *Romania Finally Adopts Lustration Law*, BALKANINSIGHT (Feb. 29, 2012, 10:03 AM), <https://balkaninsight.com/2012/02/29/romania-finally-adopts-lustration-law> [<https://perma.cc/Y5EJ-538J>] (quoting Teodor Maries, the “leader of an organization of victims of the [former] Communist regime”).
103. Karine Prémont, Charles-Philippe David & Vincent Boucher, *The Clash of Historical Analogies and Their Influence on Decision-Making: The Case of Iraqi Reconstruction Under George W. Bush*, 29 *DIPL. & STATECRAFT* 298, 304-05 (2018) (analyzing public statements, internal documents, and memoirs of officials in the George W. Bush Administration and finding that post-1945 German reconstruction was the dominant historical analogy cited in the planning of Iraq’s reconstruction, including de-Nazification).
104. See Mieczysław P. Boduszynski, *Navigating the Narrow Spaces for Transitional Justice in Iraq*, in *NEW CRITICAL SPACES IN TRANSITIONAL JUSTICE: GENDER, ART, AND MEMORY* 176, 181 (Arnaud Kurze & Christopher K. Lamont eds., 2019).
105. Mara Redlick Revkin, *Competitive Governance and Displacement Decisions Under Rebel Rule: Evidence from the Islamic State in Iraq*, 65 *J. CONFLICT RESOL.* 46, 54 (2021) (“Sunni grievances with sectarian discrimination fueled the emergence of [ISIL], which promised to re-empower those who had been marginalized by de-Baathification . . .”).

states, and are sometimes perceived as fairer and more efficient.¹⁰⁶ The coexistence of these nonstate mechanisms with formal state-led mechanisms is known as “legal pluralism.” The relationship between these parallel justice systems is cooperative in some settings but combative in others.¹⁰⁷ In the context of transitional justice, these nonstate justice systems play an important role in how communities respond to past atrocities and other societal traumas, particularly in cases where governments are weak or lack legitimacy. Examples of customary and traditional mechanisms include tribal peace agreements based on tribal law in Iraq,¹⁰⁸ “agreement[s] by . . . perpetrator[s] to undertake community service” as part of a community-based reconciliation process in Timor-Leste,¹⁰⁹ and cleansing rituals that enable children formerly associated with armed groups in Sierra Leone and Mozambique to be accepted back into their communities.¹¹⁰

In response to growing criticism of top-down, state-led processes in the 1990s, the so-called “local turn” in transitional justice in the 2000s saw an increase in international assistance for customary, traditional, and other community-based approaches.¹¹¹ Proponents of these “bottom-up” approaches hoped that they would improve the representation of local communities and civil society and promote “the indigenization of transitional justice,” referring to the “adaptation of transitional justice mechanisms to specific cultural, geographic, and historical contexts.”¹¹²

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106. *Human Rights and Traditional Justice Systems in Africa*, U.N. OFF. HIGH COMM’R FOR HUM. RTS. 1 (2016), https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_16_2_HR_and_Traditional_Justice_Systems_in_Africa.pdf [<https://perma.cc/PD84-QMWX>].
107. See generally Geoffrey Swenson, *Legal Pluralism in Theory and Practice*, 20 INT’L STUD. REV. 438 (2018) (proposing “four distinct archetypes” of legal pluralism: combative, competitive, cooperative, and complementary).
108. See, e.g., Osama Gharizi, *Supporting Transitional Justice in Fragile Environments: Lessons from Iraq Post-ISIS*, PEACELAB (Nov. 22, 2018), <https://peacelab.blog/2018/11/supporting-transitional-justice-in-fragile-environments-lessons-from-iraq-post-isis> [<https://perma.cc/4USD-UCU7>] (describing tribal-dialogue processes in Iraq that commit tribal leaders to drop demands for blood-money compensation).
109. Geoffrey C. Gunn & Reyko Huang, *Reconciliation as State-Building in East Timor*, 11 LUSOTOPIC 19, 32 (2004).
110. John Williamson, *The Disarmament, Demobilization, and Reintegration of Child Soldiers: Social and Psychological Transformation in Sierra Leone*, 4 INTERVENTION 185, 196 (2006) (citing evidence that traditional cleansing ceremonies increased community acceptance of former child soldiers in Mozambique and Sierra Leone).
111. Kochanski, *supra* note 13, at 29 (citing criticisms including the “purported mismatch between trials and [truth commissions] with local cultures and priorities, and the failure to secure local agency and participation in state-level TJ efforts”).
112. David K. Androff, Jr., *Can Civil Society Reclaim Truth? Results from a Community-Based Truth and Reconciliation Commission*, 6 INT’L J. TRANSITIONAL JUST. 296, 300 (2012).

However, as practitioners and scholars learned more about the effects of “bottom-up” processes on participants and communities,¹¹³ many began to raise concerns about potential dangers, including vigilantism, lack of due process and other human-rights violations, and the exclusion of women, youth, and ethnic or religious minorities by the elder male authorities who typically dominate customary justice mechanisms.¹¹⁴ Surveys and interviews demonstrate evidence of these risks in post-conflict settings in Somalia¹¹⁵ and Iraq.¹¹⁶

8. *Museums and Other Memorialization Mechanisms*

Memorialization mechanisms including museums, monuments, and historical education are intended to promote remembrance of past atrocities and victims. These mechanisms are also believed to decrease the likelihood of the recurrence of past atrocities. Trauma tends to distort memory, so memorialization mechanisms can be important for preserving an accurate historical record.¹¹⁷

Despite these obvious benefits, museums and other memorialization efforts raise several concerns. For one, museums and memorials may showcase politicized and incomplete historical narratives that reflect victors’ perspectives. There is also a risk that victims perceive memorialization as purely symbolic unless it is

113. See Kochanski, *supra* note 13, at 35.

114. See, e.g., Kieran McEvoy, *Letting Go of Legalism: Developing a ‘Thicker’ Theory of Transitional Justice*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 15, 40 (Kieran McEvoy & Lorna McGregor eds., 2008) (citing risks including “vigilantism, exclusionary communitarianism, reification of unequal gender or other power relationships and the related potential failings in ceding justice ownership to local communities”); Annika Björkdahl & Johanna Mannergren Selimovic, *Gendering Agency in Transitional Justice*, 46 SEC. DIALOGUE 165, 167 (2015) (“[B]ottom-up community-based transitional justice processes may privilege exclusionary and conservative politics and values . . .”).

115. Janine Ubink & Anna Rea, *Community Justice or Ethnojustice? Engaging with Customary Mechanisms to Reintegrate Ex-Combatants in Somalia*, 11 INT’L J. TRANSITIONAL JUST. 276, 285 (2017) (finding evidence that the “imposition of ethnojustice results not only in a suppression of the wishes and interests of women and youth to elderly males for the sake of establishing a peaceful post-war order, but also leads to new violence”).

116. See, e.g., Haley Bobseine, *Tribal Justice in a Fragile Iraq*, CENTURY FOUND. 11-12 (Nov. 7, 2019), https://production-tcf.imgix.net/app/uploads/2019/11/08121945/tribal-justice_bobseinePDF.pdf [<https://perma.cc/PQT8-9GD3>] (noting that “[s]everal traditional, tribal practices are harmful to women” including forced marriage and obstruction of voluntary marriage plans); Sherizaan Minwalla, *Trapped Between Borders: A Proposal to Apply International Legal Protection to Persecuted Women and Girls Who Are Unable to Flee*, 26 U.C. DAVIS J. INT’L L. & POL’Y 99, 129 (2019) (noting that the tribal justice system often uses women “as bargaining chips to resolve disputes”).

117. See Boduszyński, *supra* note 104, at 197-98.

accompanied by material remedies, such as compensation, or concrete steps to prevent recurrence, such as institutional reforms.

Previous studies further suggest cross-cultural differences in preferences for memorialization. In Uganda, which has taken a primarily grassroots and bottom-up approach to peacebuilding, some victims resent the government's refusal to acknowledge past massacres.¹¹⁸ Other studies find significant variation in preferences for memorialization among victims of the same conflict. In Rwanda, some victims appreciate the government's heavy-handed recognition of the genocide through a mandatory 100-day annual mourning period, but others have expressed concerns about feeling coerced into remembering painful events that they would prefer to forget,¹¹⁹ embracing what one scholar has described as "chosen amnesia."¹²⁰ South Sudan found that survey respondents are divided on the question of whether it is "better to speak publicly about what happened during the conflict, or . . . better to avoid speaking publicly," with around forty percent favoring public discussion and sixty percent favoring silence.¹²¹ Those in favor of public discussion cited grievances with the current government as well as desires to raise public awareness and educate future generations about their history. Those in favor of silence cited concerns about retraumatization of victims and desires for closure or forgiveness.¹²² Interestingly, respondents on both sides believed that their preferred approach was best for maintaining peace and that the other approach would lead to more conflict.¹²³

118. Carla De Yeaza & Nicole Fox, *Narratives of Mass Violence: The Role of Memory and Memorialization in Addressing Human Rights Violations in Post-Conflict Rwanda and Uganda*, 8 SOC'YS WITHOUT BORDERS 344, 358 (2013).

119. See, e.g., *id.* at 362.

120. Susanne Buckley-Zistel, *Remembering to Forget: Chosen Amnesia as a Strategy for Local Coexistence in Post-Genocide Rwanda*, 76 AFR.: J. INT'L AFR. INST. 131, 134 (2006) (describing "chosen amnesia" as voluntary rather than coerced and "a coping mechanism to . . . be able to live peacefully").

121. Olga Aymerich, Mara Revkin & Samuel Akau, *Understanding Multidimensional Fragility in South Sudan: A Baseline Study of Kajo-Keji, Yei, Bor, and Wau Counties*, INT'L ORG. FOR MIGRATION 20 (2023), https://southsudan.iom.int/sites/g/files/tmzbd11046/files/documents/2023-11/20231120_multi_dimensional_fragility_ss_report.pdf [<https://perma.cc/6QF5-MEJ3>].

122. *Id.*

123. *Id.*

II. THE IMPORTANCE OF PUBLIC ATTITUDES FOR TRANSITIONAL JUSTICE: THE CURRENT STATE OF KNOWLEDGE, GAPS, AND OPEN DEBATES

The field of transitional justice receives criticism for being theoretical and elite-driven without sufficiently engaging affected communities.¹²⁴ This Part reviews the empirical findings of a growing body of social-science literature in political science, economics, public health, and psychology about public attitudes toward transitional justice. We first situate the growth of public opinion research within a wider empirical turn in the transitional justice literature. We then discuss why public opinion matters and emphasize methodological challenges that arise when studying public attitudes. Finally, in a systematic literature review, we characterize the breadth and depth of existing scholarship, highlighting regions and topics that are understudied.

A. *The Empirical Turn in Transitional Justice Scholarship*

Given the array of transitional justice mechanisms, scholars and practitioners have been interested in assessing the conditions under which each mechanism is more or less successful. This line of inquiry has fueled a rapid increase in empirical scholarship on transitional justice that evaluates the effects of different policies. Here we summarize the major areas of this emerging literature as context for our systematic review of one subfield of this literature: empirical studies, both quantitative and qualitative, of *attitudes* toward transitional justice among conflict-affected populations. In Table 1, we characterize three distinct waves of empirical research on transitional justice. This table simplifies the development of a very complex field and is not intended to be comprehensive. For each research method, we cite representative examples in footnotes.

124. Paul Gready & Simon Robins, *Transitional Justice and Theories of Change: Towards Evaluation as Understanding*, 14 INT'L J. TRANSITIONAL JUST. 280, 299 (2020) (“Normative claims . . . remain dominant, while the evidence base for transitional justice is still weak.”).

TABLE 1. TIMELINE AND MAJOR AREAS OF EMPIRICAL RESEARCH ON TRANSITIONAL JUSTICE

Method	1980s	1990s	2000s	2010s	2020s	Waves
Qualitative Case Studies ¹²⁵	X	X	X	X	X	First Wave
Archival Methods ¹²⁶	X	X	X	X	X	
Ethnography and Participant Observation ¹²⁷	X	X	X	X	X	
Qualitative Interviews and Focus Groups ¹²⁸	X	X	X	X	X	Second Wave
Quantitative Surveys ¹²⁹		X	X	X	X	
Quantitative Event and Cross-National Datasets ¹³⁰			X	X	X	
Survey Experiments ¹³¹			X	X	X	Third Wave
Natural Experiments ¹³²				X	X	
Field Experiments ¹³³					X	
Text as Data ¹³⁴					X	

125. See, e.g., GARY JONATHAN BASS, *STAY THE HAND OF VENGEANCE: THE POLITICS OF WAR CRIMES TRIBUNALS* 6 (2002) (providing a comparative analysis of the politics of international war-crimes tribunals).
126. See, e.g., VIEBACH, HOVESTÄDT & ULRIKE &, *supra* note 70, at 6-16 (detailing the use of archival methods in transitional justice scholarship across five countries: Colombia, France, Northern Ireland, Rwanda, and South Africa).
127. See, e.g., TIM ALLEN, *TRIAL JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE LORD'S RESISTANCE ARMY*, at xiii, xv (2006) (using long-term ethnographic field research in Uganda starting in the 1980s).
128. See, e.g., Mijke de Waardt & Sanne Weber, *Beyond Victims' Mere Presence: An Empirical Analysis of Victim Participation in Transitional Justice in Colombia*, 11 J. HUM. RTS. PRAC. 209, 211 (2019) (using interviews and focus groups to analyze victims' engagement with transitional justice processes in Colombia).
129. See, e.g., Gunnar Theissen & Brandon Hamber, *A State of Denial: White South Africans' Attitudes to the Truth and Reconciliation Commission*, 15 INDICATOR S. AFR. 8, 8 (1998) (detailing a phone-based survey of 124 White South Africans conducted in 1996 shortly after the first public hearings of the TRC).
130. See, e.g., James Meernik, *Justice and Peace? How the International Criminal Tribunal Affects Societal Peace in Bosnia*, 42 J. PEACE RSCH. 271, 279-87 (2005) (providing a statistical analysis of an event dataset based on local press reports in Bosnia to assess the relationship between

The first wave began in the 1980s with qualitative case studies of single countries, as well as comparisons of similarities and differences across small numbers of countries. Such case studies were based on primary-source documents, secondary sources such as reports by journalists or human-rights organizations, and interviews with stakeholders. Some of these studies included participant observation, a method used primarily by anthropologists and sociologists to study a society or group of people through immersion and participation in their daily activities.¹³⁵

By the 1990s, anthropologists and other qualitative scholars conducted long-term immersive ethnographic fieldwork in countries where transitional justice processes were being implemented. This research included participant observation of processes and institutions¹³⁶ as well as in-depth interviews with local populations.¹³⁷ The 1990s also saw the growth of archival research related to

arrests and sentencing of former regime officials and levels of interethnic conflict and cooperation).

131. See, e.g., Cyrus Samii, *Who Wants to Forgive and Forget? Transitional Justice Preferences in Postwar Burundi*, 50 J. PEACE RSCH. 219, 220, 225 (2013) (describing a persuasion experiment in Burundi that shows that respondents who gained politically from the civil conflict are most likely to want to “forgive and forget”).
132. See, e.g., Roman David, *International Criminal Tribunals and the Perception of Justice: The Effect of the ICTY in Croatia*, 8 INT’L J. TRANSITIONAL JUST. 476, 488 (2014) (leveraging the arrest of Radovan Karadžić, which occurred partway through a survey about transitional justice, as a natural experiment); Giovanni Capoccia & Grigore Pop-Eleches, *Democracy and Retribution: Transitional Justice and Regime Support in Postwar West Germany*, 53 COMPAR. POL. STUD. 399, 412–13 (2020) (leveraging a natural experiment—the plausibly random division of Allied-occupied Germany into four zones—to estimate the effects of transitional justice policies on the prospects for democratic consolidation in post-World War II Germany).
133. See, e.g., Laia Balcells, Valeria Palanza & Elsa Voytas, *Do Transitional Justice Museums Persuade Visitors? Evidence from a Field Experiment*, 84 J. POL. 496, 497 (2022) (detailing a field experiment in Chile exploring the effects of visiting museums and memorials on attitudes toward transitional justice).
134. See, e.g., Denisa Kostovicova & Tom Paskhalis, *Gender, Justice and Deliberation: Why Women Don’t Influence Peacemaking*, 65 INT’L STUD. Q. 263, 268 (2021) (using text analysis of transitional justice debates in the Balkans to show that men dominate discussions about peacemaking).
135. Jana Krause, *The Ethics of Ethnographic Methods in Conflict Zones*, 58 J. PEACE RSCH. 329, 329 (2021) (describing ethnographic research as “an embodied research practice of immersion within a field site whereby researchers use ethnographic sensibility to study how people make sense of their world”).
136. Richard A. Wilson, *Reconciliation and Revenge in Post-Apartheid South Africa: Rethinking Legal Pluralism and Human Rights*, 41 CURRENT ANTHROPOLOGY 75, 76 n.3 (2000) (relying on field research over a four-year period, including observations of amnesty hearings).
137. Laurel E. Fletcher & Harvey M. Weinstein, *Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors*, 18 BERKELEY J. INT’L L. 102, 103 (2000) (relying on interviews of thirty-two Bosnian judges and prosecutors conducted in 1999).

transitional justice, as new democracies preserved primary-source material from periods of authoritarian rule.¹³⁸ Such qualitative methods continue to form the backbone of the field's collective knowledge of transitional justice. Over time, however, the field has become more methodologically diverse with the entry of quantitative social scientists from several disciplines, notably political science, psychology, and public health.

A second wave of empirical research began in the early 1990s with quantitative public opinion surveys of conflict-affected populations for use in observational studies. These surveys were generally administered according to random-sampling procedures or other methods aimed at achieving a representative sample. Some surveys targeted specific populations, such as Yazidis who fled ISIL's genocide in Iraq¹³⁹ and former political prisoners in Northern Ireland.¹⁴⁰ Surveys often consist of structured answer choices, like multiple-choice questions, that enable quantitative analysis of responses. They may also include open-ended questions well-suited for qualitative analysis.

Coinciding with the rise of quantitative surveys, researchers constructed several large-N cross-national datasets that traced attributes of transitional justice processes over time and in different countries. The first major dataset was released in 2010 and documents the global usage of five types of transitional justice mechanisms (trials, truth commissions, amnesties, reparations, and lustration policies) between 1970 and 2007.¹⁴¹ More recent datasets document truth commissions (2010, 2020);¹⁴² post-conflict justice processes initiated after armed conflicts between 1946 and 2006 (2012);¹⁴³ amnesty agreements (2014);¹⁴⁴

138. For example, the Iraq History Project has collected over 7,000 testimonies of victims of human-rights violations by Saddam Hussein's government available in English, Arabic, and Kurdish. See INT'L HUM. RTS. L. INST., TESTIMONIES: IRAQ HIST. PROJECT (2007).

139. Phuong Pham, Niamh Gibbons, Jana Katharina Denking, Florian Junne & Patrick Vinck, *Justice Not Forgiveness: Perspectives on Justice and Reconciliation Among Yazidi Women Refugees in Germany*, 11 J. HUM. RTS. PRAC. 530, 536 (2019).

140. See Clare D. Dwyer, *Expanding DDR: The Transformative Role of Former Prisoners in Community-Based Reintegration in Northern Ireland*, 6 INT'L J. TRANSITIONAL JUST. 274, 275 n.5 (2012).

141. Tricia D. Olsen, Leigh A. Payne & Andrew G. Reiter, *Transitional Justice in the World, 1970-2007: Insights from a New Dataset*, 47 J. PEACE RSCH. 803, 804 (2010).

142. Geoff Dancy, Hunjoon Kim & Eric Wiebelhaus-Brahm, *The Turn to Truth: Trends in Truth Commission Experimentation*, 9 J. HUM. RTS. 45, 46 (2010); Kelebogile Zvobgo, *Demanding Truth: The Global Transitional Justice Network and the Creation of Truth Commissions*, 64 INT'L STUD. Q. 609, 610 (2020).

143. See, e.g., Helga Malmin Binningsbø, Cyanne E. Loyle, Scott Gates & Jon Elster, *Armed Conflict and Post-Conflict Justice, 1946-2006: A Dataset*, 49 J. PEACE RSCH. 731, 732-33 (2012).

144. See generally RENÉE JEFFERY, AMNESTIES, ACCOUNTABILITY, AND HUMAN RIGHTS (2014) (describing trends in amnesty cases by evaluating over 700 cases between 1974 and 2007).

“personnel [transitional justice] measures” including lustration, vetting, and purges of former regime officials (2020);¹⁴⁵ and 1,500 peace agreements in conflicts between 1990 and 2016 (2019).¹⁴⁶

In the 2010s, the spread of the “credibility revolution,”¹⁴⁷ which emphasized the use of experimental and quasi-experimental methods to identify causal relationships credibly, ushered in a third wave of empirical research. In the field of transitional justice, this resulted in an increased use of survey experiments and natural experiments. Survey experiments recover causal relationships between one or more independent variables (a “cause”) and an outcome of interest (an “effect”). Participants are randomly assigned to treatment and control groups, enabling researchers to isolate the effects of a policy or program on attitudes or behavior. Survey experiments are common across the social sciences¹⁴⁸ but are not widely used by empirical legal scholars with a few exceptions.¹⁴⁹ One of the methodological contributions of this Feature is to demonstrate how survey experiments can answer important empirical questions in legal scholarship.

Natural experiments are studies where a treatment is not directly assigned by the researcher but rather occurs randomly or “as if” randomly in the real world. In the field of transitional justice, most natural experiments look at the impact of unexpected or surprising events on outcomes of interest.¹⁵⁰ For example, researchers used the arrest of Bosnian Serb Radovan Karadžić on July 21, 2008, which took place during an ongoing public opinion survey on transitional

145. Genevieve Bates, Ipek Cinar & Monika Nalepa, *Accountability by Numbers: A New Global Transitional Justice Dataset (1946-2016)*, 18 *PERSP. POL.* 161, 162-63 (2020).

146. Christine Bell & Sanja Badanjak, *Introducing PA-X: A New Peace Agreement Database and Dataset*, 56 *J. PEACE RSCH.* 452, 452 (2019).

147. See, e.g., Joshua D. Angrist & Jörn-Steffen Pischke, *The Credibility Revolution in Empirical Economics: How Better Research Design Is Taking the Con out of Econometrics*, 24 *J. ECON. PERSPS.* 3, 3-6 (2010).

148. See, e.g., James N. Druckman, Donald P. Green, James H. Kuklinski & Arthur Lupia, *The Growth and Development of Experimental Research in Political Science*, 100 *AM. POL. SCI. REV.* 627, 627 (2006).

149. See, e.g., Adam S. Chilton, *The Influence of International Human Rights Agreements on Public Opinion: An Experimental Study*, 15 *CHI. J. INT’L L.* 110, 114 (2014) (using a survey experiment to assess whether receiving information about international law changes perceptions of solitary confinement); Conor Clarke & Edward Fox, *Perceptions of Taxing and Spending: A Survey Experiment*, 124 *YALE L.J.* 1252, 1279 (2015) (using a survey experiment to study variation in perceptions of different government-spending mechanisms); Bert I. Huang, *Law’s Halo and the Moral Machine*, 119 *COLUM. L. REV.* 1811, 1812 (2019) (using a survey experiment to assess how law influences moral intuitions about artificial intelligence).

150. See, e.g., Thad Dunning, *Improving Causal Inference: Strengths and Limitations of Natural Experiments*, 61 *POL. RSCH. Q.* 282, 283 (2008) (noting that plausibly “random or ‘as if’ random of assignment to treatment and control conditions constitutes the defining feature of a natural experiment”).

justice in Croatia, as a natural experiment to estimate the effect of arresting an “out-group”¹⁵¹ war criminal on perceptions of justice among Croats.¹⁵²

A more recent methodological innovation in the study of transitional justice is the use of field experiments—also known as “randomized control trials” or RCTs—that randomize the assignment of a policy or program to study its effect on individuals or communities. Examples include a study of the effects of visiting a transitional justice museum in Chile that memorializes victims of General Augusto Pinochet’s dictatorship on attitudes toward democracy and authoritarianism¹⁵³ and a study of the impact of a radio program in Rwanda that aimed to promote reconciliation and reduce “competitive victimhood” between ethnic groups.¹⁵⁴

Finally, a handful of scholars leverage quantitative methods in the form of computational text analysis or “text as data”¹⁵⁵ to investigate transitional justice. These researchers combine increasingly accessible digital archives, digital media, and social-media data with text- and image-processing methods.¹⁵⁶ Together, experimental methods (survey experiments, natural experiments, and field experiments) and computational methods can be considered a third wave of empirical research on transitional justice, and one that is still very nascent. A critical aspect of this third wave of research is that it provides new opportunities to understand public attitudes towards transitional justice policies and programs on a much greater scale.

B. *Why Does Public Opinion Matter?*

Public opinion research has been an integral part of the study of transitional justice since the field originated. Understanding public opinion in peacetime societies is important for designing laws and policies that are perceived as legitimate and therefore worthy of compliance. Scholars of legitimacy find that people

151. An “out-group” war criminal is one who does not share the same ethnicity as the survey respondent.

152. See David, *supra* note 132, at 488 (describing the arrest as a natural experiment).

153. See Balcells et al., *supra* note 133, at 503-04.

154. See Rezarta Bilali & Johanna Ray Vollhardt, *Priming Effects of a Reconciliation Radio Drama on Historical Perspective-Taking in the Aftermath of Mass Violence in Rwanda*, 49 J. EXPERIMENTAL SOC. PSYCH. 144, 146 (2013).

155. For an overview of “text as data” applications in social science, see generally JUSTIN GRIMMER, MARGARET E. ROBERTS & BRANDON M. STEWART, *TEXT AS DATA: A NEW FRAMEWORK FOR MACHINE LEARNING AND THE SOCIAL SCIENCES* (2022).

156. See, e.g., Elke Evrard, *The Language of Inclusion: Using Critical Corpus-Based Methods to Study the Presence and Representation of “Women, Children and Vulnerable Groups” in Liberia’s Truth Commission*, 2023 SOC. JUST. RSCH. 1, 2-3, 10-16; Kostovicova et al., *supra* note 73, at 25-26.

are more likely to comply with laws and policies that represent their own values and interests, not simply those of their government or other elites.¹⁵⁷ Democratic governments that are not responsive to public opinion are prone to electoral defeat, and nondemocracies are vulnerable to coups and revolutions.

Despite widespread recognition of the importance of public opinion for institutional design,¹⁵⁸ the field of transitional justice has been slow to incorporate the study of public opinion, in part because of the difficulty of conducting survey research in conflict-affected areas. To a large extent, the field has historically been dominated by international elites primarily from the United States and Europe. In many cases, policies promoted by elites fail to resonate with their intended beneficiaries on the ground in Africa, Asia, the Middle East, and other contexts that differ from where these theories originated.¹⁵⁹ We argue that public opinion research about transitional justice is important because popular support is a critical factor in the relative success of policies. A policy's success depends, in part, on the extent to which it is perceived as legitimate by the people who are impacted. For example, one study found that public support for transitional justice policies in post-communist Hungary, Poland, and the Czech Republic was shaped by the perceived fairness of these policies.¹⁶⁰

Public opinion research can be a valuable tool for uncovering gaps between elite and public preferences and identifying policies that lack public support. Elite/public preference gaps could generate grievances that contribute to non-compliance or active opposition to a government. By contrast, more direct public input *ex ante* could legitimize the implementation of transitional justice policies *ex post*. An investigation of public attitudes toward the Colombian peace process, for example, suggested that “[h]aving an appreciation of (deep-seated) perceptions of the peace process may help . . . to pre-emptively identify and even incorporate directly some solutions to concerns shared by meaningful groups in

157. See Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 *CRIME & JUST.* 283, 310 (2003) (discussing the relationship between legitimacy and compliance where “legitimacy” is measured through survey questions that assess “the degree to which people feel that the law and legal authorities represent their interests, as opposed to the interests of those in power”).

158. See Paul Burstein, *The Impact of Public Opinion on Public Policy: A Review and an Agenda*, 56 *POL. RSCH. Q.* 29, 29 (2003) (noting widespread consensus that public opinion affects public policy and that the only disagreement is “over matters of degree”).

159. See Laurel E. Fletch & Harvey M. Weinstein, *How Power Dynamics Influence the “North-South” Gap in Transitional Justice*, 37 *BERKELEY J. INT’L L.* 1, 3 (2018) (“[T]he major funders, policy makers, and researchers working on transitional justice mostly are based in Australia, North America, and Western Europe, while the sites of transitional justice practice generally are found in Africa, Asia, and Latin America.”).

160. See Monika Nalepa, *Tolerating Mistakes: How Do Popular Perceptions of Procedural Fairness Affect Demand for Transitional Justice?*, 56 *J. CONFLICT RESOL.* 490, 507 (2012).

society.”¹⁶¹ In this sense, understanding the preferences of conflicting parties and civilians allows officials to better anticipate post-conflict outcomes.

C. *Methodological Challenges in the Study of Public Opinion Toward Transitional Justice*

While there is growing recognition that public opinion research and microlevel studies of transitional justice are valuable tools, these tools have limitations. First and foremost, there are valid concerns that excessive reliance on public opinion for designing transitional justice processes will lead to unfair outcomes. This is especially the case for minorities and other marginalized groups, who may be subject to “mob justice”¹⁶² or even “witch trials”¹⁶³ in the absence of procedural safeguards or other checks and balances. This Section reviews additional methodological challenges in the study of public attitudes toward transitional justice, including internal and external validity, ethical and safety issues, and practical implementation difficulties in survey research. Understanding these methodological challenges can help scholars improve the quality of public opinion research and draw more accurate conclusions about the populations they study.

1. *Internal Validity and Study Design*

Internal validity reflects the extent to which an experimental design generates unbiased inferences about causal relationships. While there are many possible threats to internal validity in survey research, two sources of bias are especially relevant when studying public attitudes in conflict-affected areas. The first is social-desirability bias: the tendency of survey respondents to answer questions in ways that will be viewed favorably by others. When respondents’ true preferences deviate from what they believe is the socially desirable answer, they may answer questions dishonestly, also known as “preference falsification,”

161. Nicolás Liendo & Jessica Maves Braithwaite, *Determinants of Colombian Attitudes Toward the Peace Process*, 35 CONFLICT MGMT. & PEACE SCI. 622, 633 (2018).

162. See, e.g., TSUYOSHI HASEGAWA, *CRIME AND PUNISHMENT IN THE RUSSIAN REVOLUTION: MOB JUSTICE AND POLICE IN PETROGRAD* 167 (2017); Gail Jennifer Super, *Punishment, Violence, and Grassroots Democracy in South Africa—The Politics of Populist Punitiveness*, 18 PUNISHMENT & SOC’Y 325, 329 (2016); WILLIAM D. CARRIGAN & CLIVE WEBB, *FORGOTTEN DEAD: MOB VIOLENCE AGAINST MEXICANS IN THE UNITED STATES, 1848-1928*, at 18-33 (2013).

163. See, e.g., Isaac Reed, *Why Salem Made Sense: Culture, Gender, and the Puritan Persecution of Witchcraft*, 1 CULTURAL SOCIO. 209, 212-13 (2007); Tim Allen & Kyla Reid, *Justice at the Margins: Witches, Poisoners, and Social Accountability in Northern Uganda*, 34 MED. ANTHROPOLOGY 106, 114-18 (2015).

which undermines the validity of results.¹⁶⁴ Social-desirability bias and preference falsification are powerful in authoritarian regimes, post-conflict settings, and other coercive or volatile situations where respondents have reason to fear that disclosure of their true beliefs might trigger retaliation by governments or communities. Different techniques including list experiments,¹⁶⁵ endorsement experiments,¹⁶⁶ and randomized-response techniques¹⁶⁷ can mitigate social-desirability bias in survey research by asking indirect questions, increasing the likelihood that respondents will answer honestly.¹⁶⁸

Another threat to internal validity is reliance on retrospective questions about events that occurred years or even decades prior to the interview or survey. Retrospective questions may yield inaccurate or biased data because memories

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164. See TIMUR KURAN, *PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION* 45-59 (1997).
165. In a list experiment, respondents read a list of statements and only record the number of statements they agree with. Respondents randomly assigned to the treatment group receive one additional statement, which is the statement of interest. Researchers recover the proportion of respondents who agree with the statement of interest by comparing the average number of statements that respondents agree with in the treatment and control groups. For an overview of list experiments, see, for example, Graeme Blair, Alexander Coppock & Margaret Moor, *When to Worry About Sensitivity Bias: A Social Reference Theory and Evidence from 30 Years of List Experiments*, 114 *AM. POL. SCI. REV.* 1297, 1302 (2020).
166. In an endorsement experiment, respondents are asked about their support for a policy or set of policies. The policy is endorsed by the actor of interest in the treatment group but is not accompanied by an endorsement in the control group. Researchers recover support for the actor of interest by comparing attitudes toward the policy in the treatment and control groups. For an overview of endorsement experiments, see, for example, Will Bullock, Kosuke Imai & Jacob N. Shapiro, *Statistical Analysis of Endorsement Experiments: Measuring Support for Militant Groups in Pakistan*, 19 *POL. ANALYSIS* 363, 363-64 (2011).
167. In the randomized-response technique, respondents use a randomization device, such as a dice roller or a coin flip, to determine whether or not they should answer a sensitive question truthfully. This introduces noise into the experiment, allowing for plausible deniability and increasing the likelihood that respondents will answer honestly. For an overview of randomized-response techniques, see, for example, Stanley L. Warner, *Randomized Response: A Survey Technique for Eliminating Evasive Answer Bias*, 60 *J. AM. STAT. ASS'N* 63, 63-64 (1965) (documenting the first use of the randomized-response technique); and Graeme Blair, Kosuke Imai & Yang-Yang Zhou, *Design and Analysis of the Randomized Response Technique*, 110 *J. AM. STAT. ASS'N* 1304, 1304-05 (2015) (providing a more recent application of this technique).
168. For examples of survey experiments used to mitigate social desirability in authoritarian regimes and conflict-affected settings, see Graeme Blair, Kosuke Imai & Jason Lyall, *Comparing and Combining List and Endorsement Experiments: Evidence from Afghanistan*, 58 *AM. J. POL. SCI.* 1043, 1043-44 (2014); Philipp Chapkovski & Max Schaub, *Solid Support or Secret Dissent? A List Experiment on Preference Falsification During the Russian War Against Ukraine*, *RSCH & POL.*, Apr.-June 2022, at 1; and Junyan Jiang & Dali L. Yang, *Lying or Believing? Measuring Preference Falsification from a Political Purge in China*, 49 *COMPAR. POL. STUD.* 600, 601-04 (2016).

fade or change over time, particularly memories of traumatic events.¹⁶⁹ Reliance on retrospective questions is often unavoidable because it is neither ethical nor logistically possible to conduct a survey of civilians during an ongoing conflict. New developments in computer-assisted and mobile-phone-administered surveys enable researchers to survey and interview civilians living in war zones and in authoritarian countries. However, increasingly powerful surveillance technologies make it challenging to protect respondents from the possibility of a data-security breach.¹⁷⁰

2. *External Validity and Generalizability Across Countries*

Another challenge for researchers conducting surveys about transitional justice is the inherent tradeoff between internal validity and external validity. External validity can be thought of as generalizability beyond the survey sample. Much recent empirical literature on transitional justice comes from the field of political science and particularly its subfield of comparative politics, which compares political systems and phenomena across countries with the goal of developing generalizable theories that explain findings in more than one case.¹⁷¹

A challenge for scholars who seek to build generalizable knowledge about transitional justice policies is the nonuniversality of definitions, beliefs, and norms about key concepts including justice, accountability, and truth in different cultural and religious contexts.¹⁷² Many cross-national public opinion surveys

169. Elisabeth Jean Wood, *Ethnographic Research in the Shadow of Civil War*, in *POLITICAL ETHNOGRAPHY: WHAT IMMERSION CONTRIBUTES TO THE STUDY OF POWER* 119, 138 (Edward Schatz ed., 2009) (noting that retrospective questions can introduce bias through the “coloring of accounts of the past by the perceptions of the present”).

170. MARLIES GLASIUS, META DE LANGE, JOS BARTMAN, EMANUELA DALMASSO, AOFEI LV, ADELE DEL SORDI, MARCUS MICHAELSEN & KRIS RUIJGROK, *RESEARCH, ETHICS AND RISK IN THE AUTHORITARIAN FIELD* 24 (2018) (noting that researchers working in authoritarian contexts “may need to prepare for being under electronic or physical surveillance”).

171. See, e.g., EUGENE J. MEEHAN, *THE THEORY AND METHOD OF POLITICAL ANALYSIS* 43 (1965) (“Science is a generalizing activity.”); Arend Lijphart, *Comparative Politics and the Comparative Method*, 65 *AM. POL. SCI. REV.* 682, 683–85 (1971) (analyzing the strengths and weaknesses of comparative analysis); Thomas B. Pepinsky, *The Return of the Single-Country Study*, 22 *ANN. REV. POL. SCI.* 187, 188 (2019) (“Generations of scholars of comparative politics have been trained to understand their field as one that compares political systems across countries.”).

172. See, e.g., Kristina Lyons, *Territories as Victims in Colombia’s Transitional Justice Process*, *SOC’Y FOR CULTURAL ANTHROPOLOGY* (Jan. 25, 2022), <https://culanth.org/fieldsights/territories-as-victims-in-colombias-transitional-justice-process> [<https://perma.cc/4HLD-FR9A>] (observing that “profound distinctions” between Western and indigenous “concepts of nature” and territory in Colombia “pose challenges to individuating constructs of reparations, responsibility, and harm”).

ask similar questions in different countries to facilitate comparison. Yet even with careful translation, some concepts may not have the same meaning in different contexts. A study of local perceptions of transitional justice in northern Uganda noted that both of the English words “amnesty” and “forgiveness” translate into a single Luo word, “timo-kica,” even though Western scholars and practitioners of transitional justice view these as separate concepts.¹⁷³ Such language barriers are exacerbated by the fact that foreign researchers may have understandings of justice that are not universally shared. The modern international legal order is based on a normative assumption that all people are entitled to certain fundamental human rights, but empirical research demonstrates variation in cross-cultural understandings of and support for international concepts of civil, political, economic, and social rights.¹⁷⁴

3. *Ethics, Safety, and Implementation Difficulties*

Researchers conducting fieldwork about transitional justice must adhere to a stringent set of ethical standards including the fundamental principle of “do no harm,” which becomes even more crucial and complex when working with vulnerable or victimized populations. Questions about painful past experiences can cause psychological harm including retraumatization.¹⁷⁵ Researchers should strive to strike an appropriate balance between compassionate engagement and concern for minimizing the burdens that research inevitably imposes on the time and emotions of participants.¹⁷⁶

Conducting research in areas that lack political stability or are under the control of repressive and armed factions can also pose physical risks to participants,

173. Renée Jeffery, *Forgiveness, Amnesty and Justice: The Case of the Lord's Resistance Army in Northern Uganda*, 46 *COOP. & CONFLICT* 78, 86 (2011).

174. Sam McFarland, *Culture, Individual Differences, and Support for Human Rights: A General Review*, 21 *PEACE & CONFLICT: J. PEACE PSYCH.* 10, 10 (2015) (“Cross-cultural studies suggest a common international understanding of human rights However, country-specific events can affect support within a country, and a country’s historical culture affects whether civil and political rights, or economic, social, and cultural rights receive stronger support.”).

175. This concern becomes especially pronounced in cases where certain populations have been excessively researched and repeatedly interviewed by various groups of researchers, leading to research fatigue. See, e.g., Tom Clark, ‘We’re Over-Researched Here!’ *Exploring Accounts of Research Fatigue Within Qualitative Research Engagements*, 42 *SOCIO.* 953, 953-57 (2008); Florence Ashley, *Accounting for Research Fatigue in Research Ethics*, 35 *BIOETHICS* 270, 271-72 (2020).

176. See, e.g., MARLENE DE LAINE, *FIELDWORK, PARTICIPATION AND PRACTICE: ETHICS AND DILEMMAS IN QUALITATIVE RESEARCH* 1, 1-2 (2000); Janine Natalya Clark, *Fieldwork and Its Ethical Challenges: Reflections from Research in Bosnia*, 34 *HUM. RTS. Q.* 823, 824-26 (2012).

interlocutors, and researchers.¹⁷⁷ In such environments, Western researchers are closely monitored by armed groups, leading to potential threats and compromises in the confidentiality and safety of research participants. To address these issues, obtaining permissions from local actors becomes imperative. However, this process is ethically fraught in authoritarian and conflict-affected contexts where researchers have reported attempts by local security forces and political authorities to extort bribes in exchange for access.¹⁷⁸ Researchers have also received threats to their physical safety and to that of their local partners, including translators and survey enumerators.¹⁷⁹ Moreover, as an increasing amount of data is collected digitally, researchers must exercise caution when dealing with sensitive data to prevent it from falling into the wrong hands.¹⁸⁰

Another ethical concern relates to the imbalanced power dynamics among researchers, interlocutors, and research participants. Foreign researchers from well-resourced universities can offer financial compensation and valuable professional opportunities that might inadvertently pressure interlocutors into endangering themselves. Research participants who rely on humanitarian aid may mistakenly perceive foreign researchers as humanitarian actors, leading them to believe that refusal to participate could jeopardize their chances of receiving assistance.¹⁸¹ Another common problem is that researchers may intentionally or unintentionally create unrealistic expectations about the potential benefits of being interviewed or surveyed, which undermines the authenticity of participants' consent and can lead to disappointment.¹⁸²

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177. See Lennart Kaplan, Jana Kuhnt & Janina I. Steinert, *Do No Harm? Field Research in the Global South: Ethical Challenges Faced by Research Staff*, 127 *WORLD DEV.* 1, 1-3 (2020) (detailing the potential physical and emotional harms facing field researchers in the Global South).
178. See GLASIUS ET AL., *supra* note 170, at 31-32 (describing one of the authors' experiences with attempted extortion in Iran).
179. See, e.g., Justine M. Davis & Martha Wilfahrt, *Enumerator Experiences in Violent Research Environments*, 2023 *COMPAR. POL. STUD.* 1, 13 (showing through a survey that seventy-six percent of 245 enumerators in Côte d'Ivoire had been afraid for their physical safety while conducting research).
180. See Lee Ann Fujii, *Research Ethics 101: Dilemmas and Responsibilities*, 45 *PS: POL. SCI. & POL.* 717, 718 (2012).
181. See, e.g., Elisabeth Jean Wood, *The Ethical Challenges of Field Research in Conflict Zones*, 29 *QUALITATIVE SOCIO.* 373, 380 (2006); Daniel Masterson & Lama Mourad, *The Ethical Challenges of Field Research in the Syrian Refugee Crisis*, *AM. POL. SCI. ASS'N MENA POL. NEWSL.*, Spring 2019, at 22, 24.
182. Johanna E. Foster & Sherizaan Minwalla, *Voices of Yazidi Women: Perceptions of Journalistic Practices in the Reporting on ISIS Sexual Violence*, 67 *WOMEN'S STUD. INT'L F.* 53, 60 (2018) (reporting findings from an interview study of Yazidi women who recounted "deep feelings of betrayal" after feeling pressured to tell their stories to journalists who often promised future benefits that never materialized).

The implementation of randomized trials can pose ethical challenges due the prevailing sense of insecurity in conflict and post-conflict zones. The “relational” nature of these environments means that even targeted interventions can still shape processes and outcomes for people who live in those areas.¹⁸³ When experimental interventions provide benefits exclusively to the treated group, it can result in negative emotions among individuals in the control group including shame, envy, or a sense of injustice stemming from the unequal distribution of benefits.¹⁸⁴ This disparity can exacerbate existing tensions and may lead to threats and violence against beneficiaries in the treated group.¹⁸⁵

Finally, it is both challenging and very costly to conduct field research that is methodologically rigorous and safe for participants. Current rates for face-to-face surveys conducted by local professional research firms are around \$35 per respondent in Iraq and Colombia, and the recommended sample size for a representative survey is often at least 1,000 respondents.¹⁸⁶ Such surveys are prohibitively expensive for many scholars, particularly in countries undergoing transitional justice processes.

D. *What Do We Know About Public Attitudes Toward Transitional Justice? A Systematic Literature Review*

Having described the overarching strengths and limitations of research on public attitudes toward transitional justice, this Section reviews existing literature on this subject through a systematic literature review, a methodology described above that is a powerful tool for comprehensively mapping patterns in fields of research using transparent search parameters and coding procedures that are less susceptible to bias than reviews of smaller or nonrandom samples of studies.¹⁸⁷ One of the contributions of this Feature is to demonstrate how systematic literature review methods, which are widely used in the social and medical sciences but not yet by legal scholars, can help to synthesize and visualize trends in empirical legal scholarship.¹⁸⁸ Below, we summarize our methodology, which is described in more detail in the Appendix accompanying this Feature,

183. See Sarah E. Parkinson, *Humanitarian Crisis Research as Intervention*, 290 MIDDLE E. REP. 29, 33 (2019).

184. See, e.g., Trisha Phillips, *Ethics of Field Experiments*, 24 ANN. REV. POL. SCI. 277, 280 (2021).

185. See, e.g., *id.*; Kim Yi Dionne, Augustine Harawa & Hastings Honde, *The Ethics of Exclusion When Experimenting in Impoverished Settings*, in ETHICS AND EXPERIMENTS: PROBLEMS AND SOLUTIONS FOR SOCIAL SCIENTISTS AND POLICY PROFESSIONALS 25 (Scott Deposato ed., 2015).

186. Based on one of the authors’ recent requests for estimates from survey firms in these countries.

187. See *supra* text accompanying notes 21-23.

188. See Cummings, Eisenbarth & Krucik, *supra* note 23, at 471.

with instructions for replication that we encourage other legal scholars to apply to reviews of other fields.

For this Feature, we conducted a systematic literature review of relevant studies, highlighting the transitional justice mechanisms, geographic regions, and key substantive debates that have emerged. The first and, to our knowledge, only comprehensive systematic literature review of empirical studies on transitional justice was conducted by Anna Macdonald in 2011–2012.¹⁸⁹ Other reviews of the empirical literature on transitional justice identify patterns in the field, but Macdonald’s is the only one that attempts to compile and classify the universe of all studies relevant to a set of search parameters.¹⁹⁰ Macdonald’s review covered 315 sources and was admirable in its rigor and transparency. However, given the rapid growth in the empirical literature – and public opinion research in particular – on transitional justice since 2012, the findings are a decade out of date.

Our review builds on Macdonald’s methodology with a few modifications and extends her data to 2023. We define our sample of relevant studies as articles published in English-language academic journals that present direct evidence of attitudes, perceptions, and experiences of conflict-affected individuals – whom Macdonald describes as “end-users” of transitional justice – based on interviews, surveys, or field experiments with those individuals. We limit our scope to studies that explicitly use the term “transitional justice” or one or more terms that are often used synonymously (“post-conflict justice,” “restorative justice,” and “transformative justice”) in the text of the article.¹⁹¹

189. Macdonald, *supra* note 21, at 72.

190. Other review articles based on smaller numbers of studies that do not claim to be comprehensive include: Vinjamuri & Snyder, *supra* note 2, which reviews a selection of major studies in political science; David Mendeloff, *Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice*, 31 HUM. RTS. Q. 592 (2009), which reviews a selection of psychology studies focusing on the emotional effects of transitional justice; Thoms et al., *supra* note 5, which reviews a selection of major studies prior to 2008; Carlos Martín Beristan, Darío Páez, Bernard Rimé & Patrick Kanyangara, *Psychosocial Effects of Participation in Rituals of Transitional Justice: A Collective-Level Analysis and Review of the Literature of the Effects of TRCs and Trials on Human Rights Violations in Latin America*, 25 REVISTA PSICOLOGÍA SOCIAL 47 (2010), which reviews studies only in Latin America; Laurel E. Fletcher & Harvey M. Weinstein, *Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals*, 7 J. HUM. RTS. PRAC. 177 (2015), which reviews a limited sample of the fifty-two most cited articles on transitional justice published between 2003 and 2008; and Roman David, *What We Know About Transitional Justice: Survey and Experimental Evidence*, 38 ADVANCES POL. PSYCH. 151 (2017), which reviews only quantitative surveys and experiments.

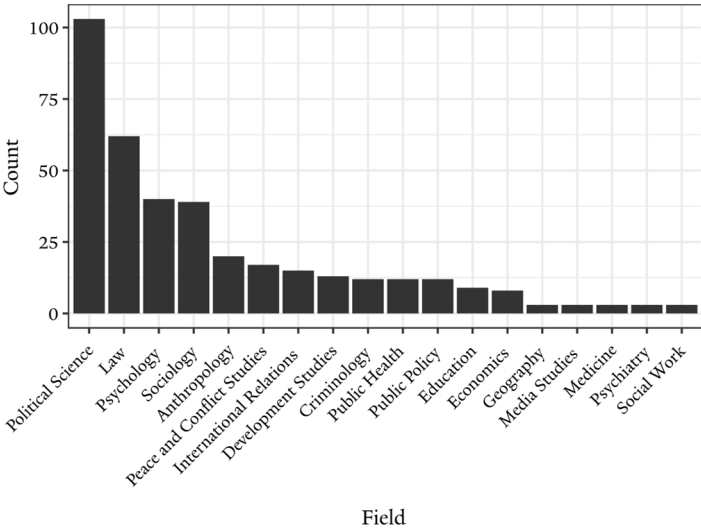
191. There is some overlap between the field of transitional justice and large related literatures on peace agreements, peacebuilding, and post-conflict reconciliation that could be the basis for a more comprehensive literature review. Since the focus and contribution of our review is justice mechanisms, we did not include studies from these related fields unless they included our

A few patterns from our analysis of the existing transitional justice literature are noteworthy. Figure 2 shows the extreme overrepresentation of scholars from institutions in the United States, United Kingdom, Canada, and a small number of western European countries. This distribution likely reflects disparities in resources and training between universities. One concerning implication of this pattern is that researchers from developing and conflict-affected countries, where transitional justice is most likely to be implemented, are least likely to be heard. These are, however, precisely the set of researchers whose expertise and perspectives based on lived experiences are especially valuable.

Figure 1 shows authors' fields of study as indicated by their academic department or doctoral degree. Whereas many systematic literature reviews focus narrowly on a single field, our interdisciplinary approach captures all relevant studies in a wide range of fields.

Many of the studies are coauthored by multiple authors in more than one field, so we count each author's field individually. Political science is the most common field followed by law, psychology, sociology, and anthropology.

FIGURE 1. DISTRIBUTION OF AUTHORS' ACADEMIC FIELDS



justice-related search terms noted above. The Appendix discusses our methodology, coding decisions, quality-control issues, as well as the caveats and limitations of our literature review including the difficulty of finding and translating non-English sources.

FIGURE 2. DISTRIBUTION OF STUDIES BY COUNTRIES OF AUTHORS' UNIVERSITIES¹⁹²

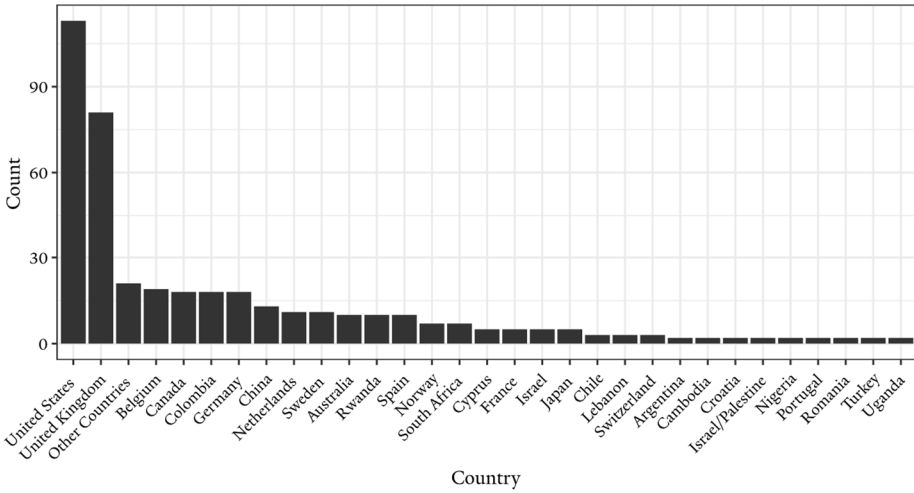
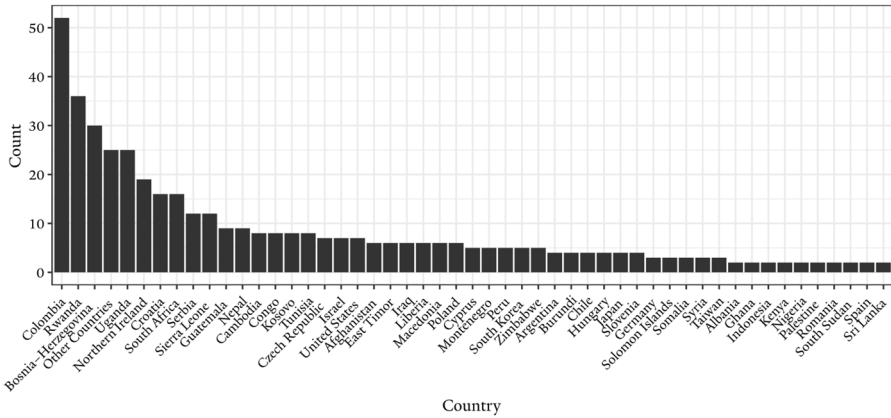


Figure 3 shows that some countries are studied more than others. Much of the knowledge about transitional justice has been driven by findings of studies in Rwanda, Uganda, Colombia, South Africa, and Northern Ireland. This is problematic considering that the unique features of these cases may not generalize to other settings.

FIGURE 3. DISTRIBUTION OF STUDIES BY COUNTRY



192. In Figures 2-5, studies can appear in multiple categories. In Figure 2, for example, a study co-authored by researchers in the United States and the United Kingdom would appear in both categories. In Figures 3-5, studies that take place in multiple countries, examine more than one transitional justice mechanism, or include more than one research method appear multiple times in the respective figure.

Figure 4 shows that some transitional justice mechanisms (such as truth commissions and domestic criminal prosecutions) receive disproportionate attention while others receive less attention, particularly more victim-centered mechanisms, such as apologies and property restitution.

FIGURE 4. PREVALENCE OF DIFFERENT TRANSITIONAL JUSTICE MECHANISMS¹⁹³

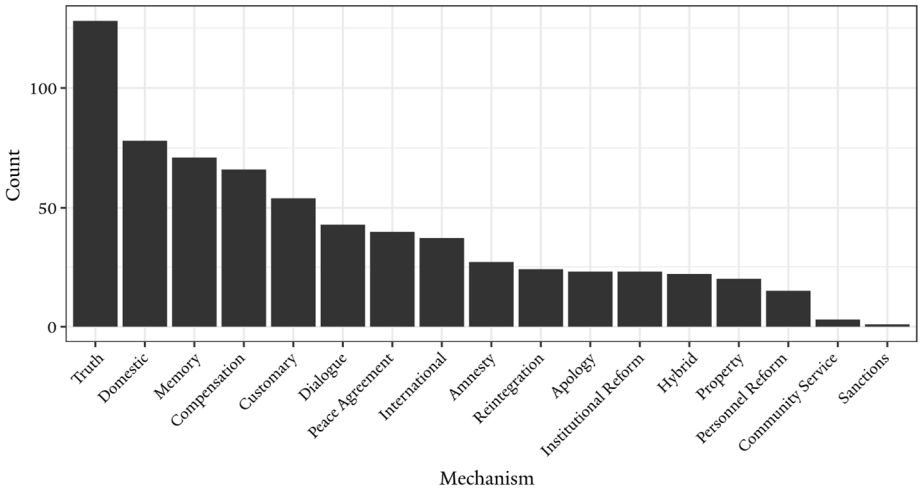
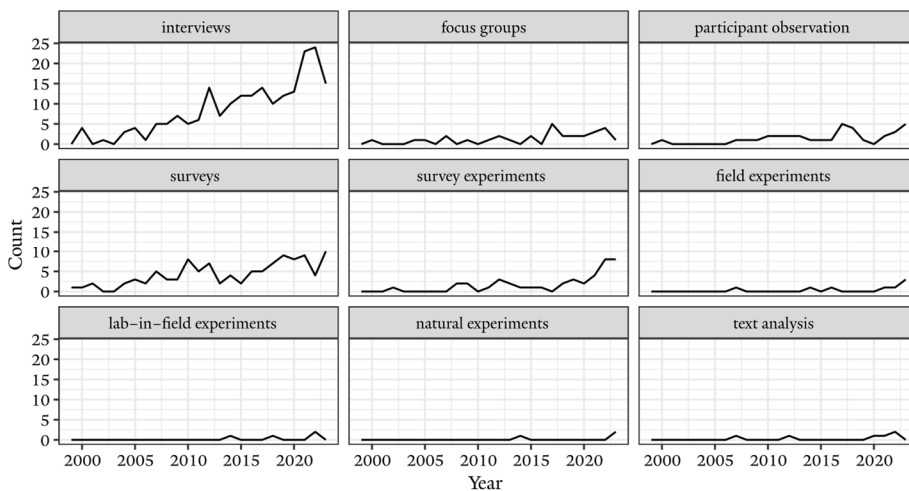


Figure 5 shows the prevalence of different research methods over time since 2000. The increasing use of interviews, surveys, survey experiments, and other experimental methods over the past decade is consistent with our description of the empirical turn in transitional justice scholarship above (Figure 2).

193. “Domestic” refers to domestic prosecutions; “international” refers to international courts including the ICC, International Court of Justice, and ad hoc international criminal tribunals, such as the ICTY and ICTR; and “hybrid” refers to hybrid mechanisms that combine elements of domestic and international law including the Special Tribunal for Lebanon and the Special Court for Sierra Leone.

FIGURE 5. PREVALENCE OF DIFFERENT RESEARCH METHODS OVER TIME

This survey of the literature demonstrates significant and concerning imbalances not only in the topics and locations studied but also in who is conducting the research.

III. KEY DEBATES ABOUT PUBLIC OPINION AND TRANSITIONAL JUSTICE

As part of our data collection in Part II, we collected information about what predictors each research study focused on (i.e., the variables that could affect attitudes towards transitional justice, such as gender or ethnic identity), and the outcomes, attitudes, or preferences that each study tried to explain. Based on this review, we identified four debates about transitional justice that recur across many conflicts. These debates are important for understanding which transitional justice mechanisms are best suited to different contexts.

First, which actors does the public perceive as best suited to administer justice? Citizens who are averse to foreign interference in national affairs may be partial to domestic judicial mechanisms. Others who are skeptical of domestic institutions may perceive international actors as more legitimate arbiters of justice.

Second, under what conditions does the public believe there ought to be limits to forgiveness and reconciliation? While many interventions in post-conflict settings are designed with reconciliation in mind, there may be instances in which it is unethical or counterproductive to promote intergroup reconciliation.

Third, is exposure to violence associated with demands for retributive justice or with war fatigue? On one hand, individuals personally affected by violence may be more likely to demand retribution. On the other hand, the perception that threat of prosecution could prolong conflict may make individuals with greater exposure to violence more favorable toward amnesty policies.

Finally, to what extent do biases resulting from group identity shape evaluations of transitional justice? Theories of intergroup bias imply that when a group is perceived as culpable for a given crime, in-group favoritism drives its members to advocate for leniency. In contrast, when one's out-group is accused of crimes, out-group distrust increases demand for accountability via legal mechanisms. However, evidence for these biases is mixed in practice. This Part summarizes each of these key debates before presenting survey evidence from Ukraine and Iraq that speaks to these open questions.

A. *Who Should Administer Justice? Tradeoffs Between International and Domestic Mechanisms*

The first set of debates concerns which actors the public perceives as best suited to administer justice. In cases where judicial mechanisms are present, many of these debates center around whether judicial processes should be state led (e.g., domestic trials or tribunals) or imposed by external actors (e.g., international trials or tribunals). These debates highlight a tension between international law and norms of noninterference in national affairs. If civilians value principles of sovereignty and noninterference, those impacted by conflict are likely to favor justice mechanisms that operate through domestic legal institutions rather than international legal institutions.

The development and exercise of international criminal law, most notably through the ICC, generated considerable debate about the extent to which international legal bodies undermine domestic sovereignty. States that have not ratified the Rome Statute frequently cite its incompatibility with their own national constitutions. In the past few years, a handful of states have withdrawn or threatened to withdraw from the ICC, reflecting a renewed debate about sovereignty and power imbalances within the court.¹⁹⁴ These discussions suggest an overarching skepticism of international law and a preference for state-led justice.

A contrasting view suggests that international actors are best suited to facilitate transitional justice mechanisms. There are a few reasons why this could be

194. Oumar Ba, *A Truly International Criminal Court: Why the New Prosecutor Should Look Beyond Africa*, FOREIGN AFFS. (June 18, 2021), <https://www.foreignaffairs.com/articles/africa/2021-06-18/truly-international-criminal-court> [<https://perma.cc/6HTE-VAEG>] (“Several African countries . . . have rebelled against the court, with some arguing that its reluctance to investigate Western countries is evidence of its ‘imperial’ character.”).

the case. For one, the adoption of international law in post-conflict contexts may be viewed as more procedurally fair or legitimate. In armed conflicts where the state engages in violence, domestic trials may be perceived to advantage the government systematically relative to nonstate actors. The ability of international law to confer legitimacy is especially promising in nonconsolidated democracies with weak institutions. When a domestic judicial system is perceived as ineffective, partial, or corrupt, an international judicial process may be an attractive alternative.

B. The Normative and Empirical Limits of Forgiveness

A second overarching debate concerns the potential for and limits of forgiveness and reconciliation between individuals and groups on opposing sides of conflict. One aspect of this debate concerns whether and when “forgiving and forgetting” is the quickest pathway to resolving a conflict. Transitional justice policies often require trade-offs between the conflicting objectives of peace and justice. For example, amnesty policies may bring adversarial groups to the negotiating table but could preclude alleged perpetrators of war crimes from standing trial, thereby prioritizing peace over justice. In contrast, the threat of prosecution may deter warring groups from laying down their arms, thus prioritizing justice over peace. Surveys and interviews can illuminate how societies view the conflicting imperatives of peace and justice, and what they think is the appropriate balance.

Research on public attitudes also provides insight into how power imbalances and changes in relative status may affect the likelihood of reconciliation. One survey in Burundi found evidence that willingness to forgive perpetrators depends on identity, victimization, and power relative to other groups. Respondents most likely to forgive were those who were marginalized prior to the civil war but gained substantially higher political status after the war, suggesting that post-war gains may help to compensate for past grievances.¹⁹⁵

An important question for practitioners of transitional justice is whether the objective of interventions in post-conflict societies should always be to promote forgiveness and reconciliation. The field of peacebuilding is largely based on an optimistic assumption that reconciliation is possible. Much of the current experimental literature on transitional justice and the related field of peacebuilding uses informational and programmatic interventions to try to promote reconciliation and forgiveness. Although there is a growing body of evidence about the determinants of successful peacebuilding interventions, we are also learning about the limits of these interventions and facing difficult normative and ethical

195. See Samii, *supra* note 131, at 220.

questions. It is widely recognized by scholars across a range of disciplines that true forgiveness is voluntary, and perpetrators do not have a right to be forgiven. In practice, however, victims often do face pressure to forgive and forget.¹⁹⁶ This is troubling in contexts with high levels of gender, racial, or socioeconomic inequalities.¹⁹⁷ Likewise, there have been documented instances of aid workers or community members—often male elders—instrumentalizing victims of sexual violence in order to advance agendas that are not necessarily in the victims’ interests.¹⁹⁸ If we accept that victims have a right to refuse to forgive, how actively should international organizations and practitioners of transitional justice promote forgiveness and reconciliation after severe atrocities?

C. *Conflicting Findings on Exposure to Violence and Other Harms*

A third important debate explores how individual experiences with violence and other conflict-related harms affect victims’ preferences for transitional justice. Some studies find that exposure to violence is associated with demands for revenge and refusals to negotiate. Analyses of armed conflict show that revenge can be both a rational and an emotional response to political violence. For example, Laia Balcells traces an endogenous trend in violence during the Spanish Civil War, demonstrating that individuals who were victimized in past episodes of violence were more likely to advocate for revenge or retaliation in the future.¹⁹⁹

While patterns of retaliation or revenge are often explained by anger or hatred, exposure to violence induces other emotional responses that make civilians resistant to compromise. In a study of public attitudes in the West Bank, East Jerusalem, and the Gaza Strip, researchers found that individuals who reported more exposure to violence experienced greater psychological distress and a

196. See Neelke Doorn, *Forgiveness and Reconciliation in Transitional Justice Practices*, 15 *ETHICAL PERSPS.* 381, 388 (2008) (citing “re-education” camps in China and Cambodia as examples where “coercion or pressure by a group reduces the gesture of forgiveness to a theatrical gesture”).

197. See Holly E. Porter, *Justice and Rape on the Periphery: The Supremacy of Social Harmony in the Space Between Local Solutions and Formal Judicial Systems in Northern Uganda*, 6 *J. E. AFR. STUD.* 81, 93 (2012) (raising concerns about social pressure on victims of sexual violence to forgive perpetrators).

198. See Foster & Minwalla, *supra* note 182, at 59-60.

199. See Laia Balcells, *Rivalry and Revenge: Violence Against Civilians in Conventional Civil Wars*, 54 *INT’L STUD. Q.* 291, 291 (2010) (finding a “clear endogenous trend whereby subsequent levels of violence are highly correlated with initial levels of violence”).

heightened sense of threat, and thus were less favorable toward a hypothetical peace agreement between Israel and Palestine.²⁰⁰

On the other hand, there are reasons to believe that exposure to violence may reduce demands for revenge and increase the likelihood of reconciliation after fighting ends. One such theory of “war fatigue” posits that exposure to protracted violence makes people more detached and less willing to engage in conflict.²⁰¹ A survey in Pakistan found that poor individuals living in urban areas bear many of the negative externalities of extremist violence and therefore are less likely to support militant organizations.²⁰² Communities that experience protracted violence may also be more willing to pardon individuals involved in inciting violence if it means that conflict will end. Reports of “war fatigue” from conflict in northern Uganda highlight how civilians were willing to forgive the Lord’s Resistance Army if it led to a peaceful resolution of the conflict.²⁰³ In Cote d’Ivoire, war fatigue spurred the initiation of the Ouagadougou Agreement in 2007, which pardoned anyone who committed crimes during the conflict.²⁰⁴

Still other studies explore the fact that in some cases, victims of violence, crime, or other types of harm may experience post-traumatic growth in the form of increased civic engagement, political participation, and other prosocial behaviors.²⁰⁵

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200. See Daphna Canetti, Julia Elad-Strenger, Iris Lavi, Dana Guy & Daniel Bar-Tal, *Exposure to Violence, Ethos of Conflict, and Support for Compromise: Surveys in Israel, East Jerusalem, West Bank, and Gaza*, 61 J. CONFLICT RESOL. 84, 100-02 (2017).
201. See Amy C. Finnegan, *Forging Forgiveness: Collective Efforts Amidst War in Northern Uganda*, 80 SOCIO. INQUIRY 424, 425 (2010) (“[A] communal sense of war fatigue is a possible factor pushing the Acholi to embrace forgiveness . . .”).
202. See Graeme Blair, C. Christine Fair, Neil Malhotra & Jacob N. Shapiro, *Poverty and Support for Militant Politics: Evidence from Pakistan*, 57 AM. J. POL. SCI. 30, 30 (2013) (“Pakistan’s urban poor are more exposed to the negative externalities of militant violence and may in fact be less supportive of the [extremist] groups.”).
203. See Scott Worden, *The Justice Dilemma in Uganda*, U.S. INST. PEACE (Feb. 1, 2008), <https://www.usip.org/publications/2008/02/justice-dilemma-uganda> [https://perma.cc/9EN9-B9HV].
204. See Abu Bakarr Bah, *Democracy and Civil War: Citizenship and Peacemaking in Côte d’Ivoire*, 109 AFR. AFFS. 597, 610 (2010) (explaining that the Ouagadougou Agreement was reached because “[t]he combination of sense of vulnerability, war fatigue, lack of a clear path to military victory, and the shifting position of Burkina Faso provided fertile ground for compromise”).
205. See, e.g., Regina Bateson, *Crime Victimization and Political Participation*, 106 AM. POL. SCI. REV. 570, 570 (2012) (finding that victims of crime in Latin America become more engaged in civil and political life than nonvictims); Michael Bauer, Christopher Blattman, Julie Chytílová, Joseph Henrich, Edward Miguel & Tamar Mitts, *Can War Foster Cooperation?*, 30 J. ECON. PERSPS. 249, 249-250, 259 (2016) (providing a meta-analysis of sixteen studies finding that individual exposure to war-related violence is associated with an increase in social cooperation).

D. *Conflicting Findings on the Effects of Intergroup Biases*

Another salient factor thought to shape public attitudes toward transitional justice is group identity. Scholarship on intergroup bias suggests that individuals are more willing to forgive members of their in-group for their crimes while demanding accountability from members of their out-group. The dual phenomena of in-group favoritism and out-group distrust has been studied extensively in psychology and sociology.²⁰⁶ A common observation across experimental and observational studies is that threats – such as security threats that arise during or in anticipation of a violent conflict – may exacerbate intergroup anxiety, bias, and conflict.²⁰⁷

Novel empirical work provides insight into how intergroup biases make processes of post-conflict reconciliation difficult. For example, experiments conducted in Sri Lanka during a cease-fire between Sinhalese and Tamils show that priming respondents to think of a geographic area in which their in-group constituted a minority rather than a majority population made them less favorable toward reconciliation.²⁰⁸ In post-apartheid South Africa, surveys found that South Africans believed granting amnesty to members of their out-group who committed crimes was “unfair,” even when families of the victims received compensation.²⁰⁹ As these examples demonstrate, intergroup tensions are heightened during an ongoing or recent civil conflict.

Other theories suggest that intergroup biases shape public attitudes in ways that are less intuitive. In particular, people may punish in-group members more harshly for crimes they have committed. The phenomenon of “in-group policing,” for example, describes situations in which individuals sanction members of their in-group but generally ignore crimes committed by their out-group.²¹⁰

206. See GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 29-65 (1954).

207. See, e.g., Omar Shahabudin McDoom, *The Psychology of Threat in Intergroup Conflict: Emotions, Rationality, and Opportunity in the Rwandan Genocide*, 37 INT’L SEC. 119, 137 (2012) (finding that threat perceptions were an important driver of ethnic polarization during the Rwandan genocide).

208. See Mark Schaller & A.M.N.D. Abeysinghe, *Geographical Frame of Reference and Dangerous Intergroup Attitudes: A Double-Minority Study in Sri Lanka*, 27 POL. PSYCH. 615, 615 (2006) (“[W]hen Sinhalese participants were inclined to think of their group as the outnumbered minority, stereotypic perceptions of Tamils were more demonizing . . .”).

209. James L. Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 46 AM. J. POL. SCI. 540, 545, 550 (2002).

210. See James D. Fearon & David D. Laitin, *Explaining Interethnic Cooperation*, 90 AM. POL. SCI. REV. 715, 715 (1996).

IV. INSIGHTS FROM ORIGINAL DATA ON PUBLIC OPINION IN IRAQ AND UKRAINE

To address the four key debates discussed in the previous Part and demonstrate both the strengths and limitations of researching public attitudes toward transitional justice, we draw on two sets of studies conducted by the authors in Ukraine in 2017 and Iraq between 2017 and 2018.²¹¹ These studies were designed independently of one another using different survey questionnaires, so the results are not perfectly comparable. However, there is substantial overlap in the variables of interest in the two studies including personal experiences with conflict-related harm, group identity, and attitudes toward transitional justice, enabling us to draw comparisons. The purpose of the studies is both to illustrate some of the key debates in the field and to highlight the importance of context in studying transitional justice. Across Iraq and Ukraine, considerable cross-national and subnational variation in public attitudes towards transitional justice policies speaks to the value of conducting public opinion research. We do not claim that these two studies are exemplary or provide definitive answers to the debates outlined above. Rather, the purpose of this comparison is to demonstrate that attitudes toward transitional justice vary significantly not only between countries but also between different regions and ethnic or religious groups within the same country, highlighting the importance of comparative studies and replication at both the cross-national and sub-national levels. We also acknowledge the methodological limitations of our studies and emphasize the importance of learning from diverse methods and disciplines in order to advance cumulative knowledge.

A. *Overview of the Ukraine Case Study*

In Ukraine, we partnered with Kyiv International Institute of Sociology, a Ukrainian research firm,²¹² to conduct a public opinion survey about transitional justice in the Donbas region,²¹³ which borders Russia and has been controlled by pro-Russia separatists since Russia's previous incursion into the region in

211. See, e.g., Alrababa'h, Myrick & Webb, *supra* note 24, at 752; Kao & Revkin, *supra* note 25, at 361.

212. Kyiv International Institute of Sociology is a private Ukrainian company that works in collaboration with the National University of Kyiv-Mohyla Academy. See *About Us*, KIIS, <https://www.kiis.com.ua/?lang=eng&cat=about> [https://perma.cc/ZL9X-EA2Q].

213. See Alrababa'h, Myrick & Webb, *supra* note 24. The survey also included questions on foreign aid. See *id.* at 748.

2014.²¹⁴ We fielded the survey from April to June 2017, after which parts of the Donbas region became largely inaccessible to researchers. Although the survey predates Russia's most recent invasion of Ukraine in 2022, it provides insights into the larger conflict which began in 2014 with Russia's annexation of Crimea. The annexation emboldened Russian-backed separatists in the Donbas to declare an independent state, which then prompted Ukraine to launch a counter-offensive against pro-Russian forces in the Donbas. Given the longstanding rift between Ukrainian loyalists and pro-Russian separatists and other perceived "collaborators" in the Donbas, this was a useful location to study preferences for transitional justice during a unique window of opportunity in 2017 that has since closed.²¹⁵

The survey provides a valuable snapshot of public opinion at that moment in time and is, to our knowledge, the most reliable data on attitudes toward transitional justice from the Donbas. Our survey was administered to a random sample of 1,621 respondents in two administrative districts of eastern Ukraine, Donetsk and Luhansk, that comprise the Donbas region.²¹⁶ The sample was stratified into two areas: the territory occupied by Russian-backed separatists that comprised the self-proclaimed Donetsk and Luhansk Peoples' Republics (873 respondents), and the areas of Donetsk and Luhansk that remained under control of the Ukrainian government (748 respondents).²¹⁷

214. See Nigel Walker, *Conflict in Ukraine: A Timeline (2014–Eve of 2022 Invasion)*, HOUSE OF COMMONS LIBR. 4-5 (2023), <https://researchbriefings.files.parliament.uk/documents/CBP-9476/CBP-9476.pdf> [<https://perma.cc/L2VG-WCJH>].

215. To our knowledge, there has not been any published public opinion survey on Ukrainians' preferences for different transitional justice mechanisms in the separatist territories since Myrick and Alrababah's 2017 study, although political scientists have conducted more recent surveys on other conflict-related topics in Ukraine. See, e.g., Austin J. Knappe, Anna O. Pechenkina & Daniel M. Silverman, *Civilian Mindsets Toward Peace in Wartime: Evidence from Ukraine* (June 2, 2023) (unpublished manuscript), <https://ssrn.com/abstract=4459106> [<https://perma.cc/CB7R-P73D>] (surveying support for peace); Yonatan Lupu & Geoffrey P.R. Wallace, *Targeting and Public Opinion: An Experimental Analysis in Ukraine*, 67 J. CONFLICT RESOL. 951 (2023) (surveying attitudes toward the targeting of civilians); Janina Dill, Marnie Howlett & Carl Müller-Crepon, *At Any Cost: How Ukrainians Think About Self-Defense Against Russia*, AM. J. POL. SCI., October 2023.

216. As discussed above, surveys and interviews with conflict-affected populations present important ethical, security, and logistical challenges. In addition to obtaining approval for this study from Stanford University's Institutional Review Board (Protocol #45191), we took several steps to minimize risks to participants including a guarantee of anonymity and a detailed informed-consent process. We also administered the survey by phone and a computer-based questionnaire rather than conducting in-person interviews for ethical and safety reasons.

217. We also fielded the same survey to a sample in western Ukraine. In this Feature, we discuss our results for the sample of respondents who are proximate to the conflict zone (i.e., living in the Donbas region) because of our interest in the attitudes of civilians directly impacted by

In the survey, respondents were first asked about their attitudes toward the separatist movement in eastern Ukraine. Then, they read a hypothetical scenario about the ending of the conflict and were asked to evaluate three transitional justice mechanisms relevant to the Ukraine case. For all the survey vignettes, the outcome of the conflict was described as a stalemate, reflecting the status quo in 2017. In addition to being the most plausible outcome to the conflict at the time the survey was fielded, we described the outcome as a stalemate to prevent the introduction of new power dynamics that would affect respondents' attitudes toward transitional justice options. Survey respondents read the following text:

Assume the following situation occurs:

- The fighting ends in a few years and the borders of the territory currently known as the Luhansk and Donetsk People's Republics remain as they are today.

Then, respondents were randomly assigned to read one of three treatment conditions. These hypothetical scenarios attributed the majority of war crimes to separatists, to pro-Ukrainian forces, or to both sides equally. The treatments read:

- Separatist Treatment: People who are fighting for the Luhansk and Donetsk People's Republics have committed more war crimes, such as the intentional killing of civilians or prisoners, torture, and destroying civilian property.

OR

- Pro-Ukrainian Treatment: Representatives of pro-Ukrainian forces have committed more war crimes, such as the intentional killing of civilians or prisoners, torture, and destroying civilian property.

OR

- Neutral Treatment: People who are fighting for the Luhansk and Donetsk People's Republics and pro-government forces have committed equal numbers of war crimes, such as the intentional killing of civilians or prisoners, torture, and destroying civilian property.

We next asked respondents to consider three options for transitional justice, which were described in nontechnical terms. We focused on three mechanisms that were salient in the Ukrainian case at the time our survey was fielded in 2017 and have been widely used in other post-conflict settings: (1) international trials, (2) domestic trials under Ukrainian law, and (3) an amnesty policy that would

conflict. This approach allows us to compare respondents in the same administrative units that live inside and outside of territories occupied by Russian-backed separatists. Our key results in the survey are similar in central and western Ukraine.

preclude alleged perpetrators of war crimes from standing trial. While these mechanisms are a subset of a broader array of transitional justice options, we emphasized these policies because they were widely discussed in Ukrainian media with respect to the conflict in the Donbas and therefore were intuitive to the public. The text of the survey read:

Assume that the following actions are being considered when the conflict ends:

- Send perpetrators of war crimes to be tried under international law.
- Send perpetrators of war crimes to be tried under Ukrainian law by Ukrainian authorities.
- Pardon everyone who took up arms during the conflict.

Respondents were then asked to evaluate each of these three actions:

1. How favorable or unfavorable do you feel about this action?
2. Do you think this action will bring peace to the region?
3. Do you think this action will create justice by holding those who committed war crimes accountable?

B. Results of the Ukraine Case Study

The findings in our survey speak to each of the key debates around public opinion and transitional justice described in Part III. The primary finding from the study was that Ukrainians had more faith in international law than in domestic judicial processes at the time of the survey in 2017, suggesting that international legal mechanisms may be particularly effective in settings where citizens perceive states as weak or corrupt. This finding speaks to the conditions under which conflict-affected populations prefer domestic or international justice mechanisms.

1. Preferences Among Different Justice Mechanisms

The first of the four debates described in Part III is: Which actors does the public perceive as legitimate arbiters of justice? Here, we emphasize a distinction between “domestic” justice mechanisms (i.e., trials held by the Ukrainian government) and “international” justice mechanisms (i.e., trials conducted by international organizations like the ICC). Both options were realistic in the Ukrainian case, but neither had been fully implemented. Domestic trials were used to prosecute some crimes committed during the conflict in Donbas, although there was not a systematic attempt to address alleged war crimes

committed by senior officials.²¹⁸ The most prominent domestic trial was that of former Ukrainian President Viktor Yanukovich, who was charged with high treason for his alleged role in aiding Russia's military operations on Ukrainian territory.²¹⁹ Numerous other domestic trials featured alleged Russian soldiers captured in eastern Ukraine and tried in Kyiv.²²⁰

With respect to international law, Ukrainian officials had granted the ICC ad hoc jurisdiction over alleged war crimes in February 2014. Initial reports concluded that crimes committed during the 2014 EuroMaidan protests did “not amount to crimes against humanity.”²²¹ While subsequent preliminary reports from the ICC detail alleged war crimes that occurred in eastern Ukraine and Crimea,²²² the ICC Prosecutor had not opened an official investigation concerning the situation at the time our survey was conducted.²²³

Figure 6 shows the average support for international law and Ukrainian law in our survey sample. The panel on the left shows the average level of support for these transitional justice policies among the sample of respondents who live in the Donbas territory controlled by the Ukrainian government. The panel on the right shows the average level of support among respondents who live in territories occupied by the separatists. As seen in the figure, international law consistently receives higher support than Ukrainian law. This finding also holds among respondents who identify as ethnically Ukrainian and among a larger sample of Ukrainians living in the central and western territories in the country. As we may expect, the difference in support for international law and Ukrainian law is smaller among these groups than among people who live in the separatist republics, but international law is still preferred.

218. See Iryna Marchuk, *Ukraine and the International Criminal Court: Implications of the Ad Hoc Jurisdiction Acceptance and Beyond*, 49 VAND. J. TRANSNAT'L L. 323, 346 (2016).

219. See Poroshenko Calls Russia “Aggressor” in Yanukovich Trial, RADIO FREE EUR./RADIO LIBERTY (Feb. 21, 2018, 5:26 PM GMT), <https://www.rferl.org/a/ukraine-poroshenko-testifies-yanukovich-trial/29053263.html> [<https://perma.cc/ZYV7-LV2W>].

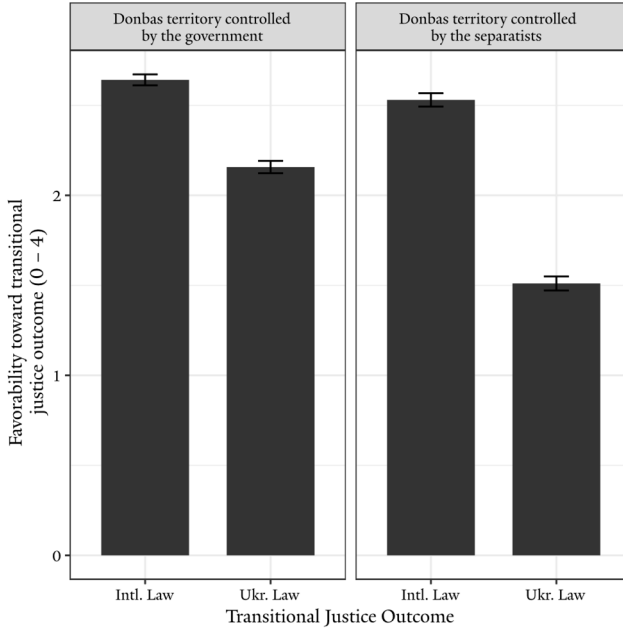
220. See Alec Luhn, “Russian Soldiers” Captured in Ukraine to Face Trial on Terrorism Charges, GUARDIAN (May 18, 2015, 10:48 AM EDT), <https://www.theguardian.com/world/2015/may/18/russian-soldiers-ukraine-trial-terrorism-charges> [<https://perma.cc/Q75L-CTB4>].

221. ICC Probe: No Crimes Against Humanity at Ukraine’s EuroMaidan, RADIO FREE EUR./RADIO LIBERTY (Nov. 13, 2015, 2:56 AM GMT) <https://www.rferl.org/a/icc-probe-finds-no-crimes-against-humanity-at-ukraine-euromaidan/27362584.html> [<https://perma.cc/JY5W-MJ89>].

222. See Off. of the Prosecutor, *Report on Preliminary Examination Activities (2017)*, INT’L CRIM. CT. 26 (Dec. 4, 2017), https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf [<https://perma.cc/J9WG-XACZ>] (“The Office will continue its detailed analysis of the alleged crimes . . . with a view to reaching conclusions on jurisdictional issues within a reasonable time frame.”).

223. The ICC has jurisdiction over four categories of crimes: genocide, crimes against humanity, war crimes, and crimes of aggression.

FIGURE 6. SUPPORT FOR INTERNATIONAL LAW AND UKRAINIAN LAW BY REGION



One reason why respondents may perceive international law as more stabilizing and legitimizing relative to Ukrainian law is public distrust in Ukraine’s political institutions, most notably the judicial system. At the time our survey was fielded, seventy-two percent of Ukrainians had little to no trust in the Ukrainian judicial system.²²⁴ Open-ended responses in our survey suggested that perceptions of judicial corruption and incompetence shaped public attitudes toward transitional justice policies. For example, one respondent wrote: “Every person that committed a war crime, from any side, should face the international tribunal. I don’t believe that Ukrainian courts can be competent and impartial.” More generally, a common theme from the open-ended responses from civilians living in Donbas was dissatisfaction and frustration with the state and public officials. For example, one respondent wrote: “The authorities are to blame! They launder money and spill human blood. They are the ones that need to be judged!!!”

Interestingly, these results differ from previous studies, which suggest that conflict-affected populations often prefer “local” justice processes such as domestic courts or customary law over international justice mechanisms because

224. See Valentyna Polunina, *Unfinished Business: Acceptance of International Criminal Justice in Ukraine*, INT’L NUREMBERG PRINCIPLES ACAD. 2 (2017), https://www.nurembergacademy.org/fileadmin/user_upload/Ukraine.pdf [<https://perma.cc/E4B6-DFGU>].

the latter are perceived as externally imposed and incompatible with the local context.²²⁵ However, our findings are consistent with a previous survey in Kenya, which found a correlation between older age and a preference for international over domestic prosecutions, and attributed this difference to older respondents having “witnessed repeated failures of domestic institutions to sort out post-conflict justice issues.”²²⁶

The results of the survey in Ukraine suggest that international law may be preferred over domestic justice systems in democratic states with political and legal institutions that are viewed as ineffective and corrupt. In such contexts, the public may demand justice and accountability for atrocities committed during a conflict but distrust the competence or impartiality of the state to provide it adequately. Reports of informal local systems of justice, including the rise of paramilitary organizations and “vigilante justice,” in Ukraine are consistent with concerns about weak rule of law.²²⁷ Future public opinion research in post-conflict settings could more thoroughly unpack the relationship between attitudes toward state institutions and transitional justice mechanisms.

2. *The Limits of Forgiveness*

A second important debate about public attitudes toward transitional justice is: how should we think about the tradeoffs between amnesty and accountability? One policy that we asked respondents to consider was amnesty, or immunity from legal prosecution. In Ukraine, the idea of granting amnesty to perpetrators of conflict-related crimes was outlined in the 2014 Minsk Agreement and received criticism from multiple stakeholders.²²⁸ While a blanket amnesty policy

225. See James Meernik & Kimi King, *A Psychological Jurisprudence Model of Public Opinion and International Prosecution*, 17 INT’L AREA STUD. REV. 3, 4 (2014) (finding in a survey across twelve countries that there is “a great deal of misinformation and misunderstanding among the affected publics regarding the work of international courts, as well as a fair degree of distrust, skepticism and indifference”).

226. Eamon Aloyo, Geoff Dancy & Yvonne Dutton, *Retributive or Reparative Justice? Explaining Post-Conflict Preferences in Kenya*, 60 J. PEACE RSCH. 258, 267 (2023) (discussing the finding that “respondents in older age groups are more likely to prefer outside judicial intervention”).

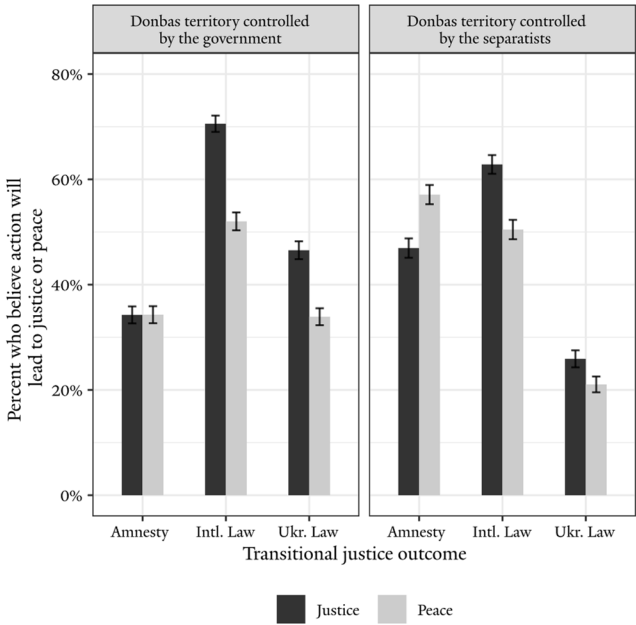
227. See Yuliya Zabyelina, *Vigilante Justice and Informal Policing in Post-Euromaidan Ukraine*, 35 POST-SOVIET AFFS. 277, 277 (2019) (observing that since 2014, self-organized groups of Ukrainians who are “[e]ither unwilling to accept the pace of the reforms or the quality of their implementation . . . decided to take law and order into their own hands”).

228. See, e.g., *Accountability for Killings in Ukraine from January 2014 to May 2016*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS. 4 (2016), https://www.ohchr.org/sites/default/files/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf [<https://perma.cc/Q2PQ-JFMR>] (urging the Government of Ukraine “to send a strong and consistent message to all those responsible for gross violations of human rights . . . that there will be no amnesty and that they will be held fully accountable for their acts”).

had not been adopted when our survey was fielded in 2017, the Ukrainian government introduced amnesty legislation that was narrower in scope. For example, a 2017 law granted amnesty to Ukrainian forces who had committed minor offenses during the conflict in Donbas.²²⁹

To probe attitudes towards each transitional justice mechanism, we also asked respondents the extent to which they thought that amnesty, international law, and Ukrainian law will lead to justice and to peace. Figure 7 displays the percentage of respondents in each region that believed that the form of post-conflict justice was “somewhat likely” or “very likely” to lead to justice or peace, pooling across all treatment groups. Interestingly, on the whole, Ukrainians believed that international law would be more likely to lead to both justice *and* peace relative to either amnesty policies or Ukrainian law. One exception is in the separatist territories, where respondents believed that amnesty policies would lead to more peace than international law. Overall, however, as illustrated in Figure 7, respondents in separatist territories still preferred international law to amnesty policies.

FIGURE 7. BELIEF THAT TRANSITIONAL JUSTICE POLICIES WILL BRING PEACE OR JUSTICE IN UKRAINE

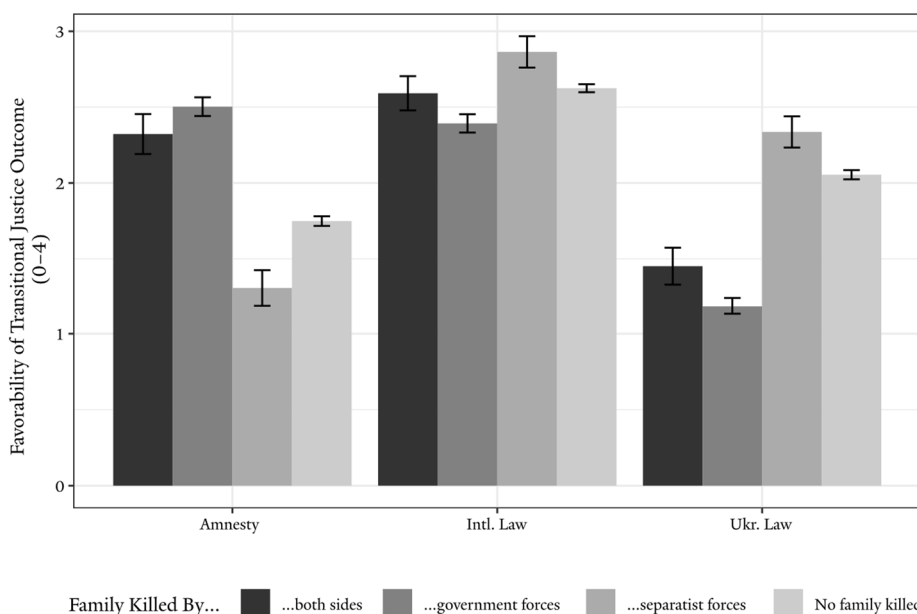


229. *Lutsenko Says No General Amnesty for Donbas Separatists*, UNIAN (Apr. 2, 2017, 8:44 PM), <https://www.unian.info/politics/1854964-lutsenko-says-no-general-amnesty-for-donbas-separatists.html> [<https://perma.cc/JTT3-L7KL>].

3. *Victimization and Exposure to Violence*

Third, does exposure to violence increase demands for accountability or amnesty? On the one hand, people who have had loved ones killed as a result of the conflict may be motivated by a desire to seek retributive justice. This suggests that such respondents may be more favorable toward trials than amnesty policies. On the other hand, theories about “war fatigue” suggest that people with the greatest exposure to violence would be most likely to advocate for blanket amnesty policies, presuming it might end the conflict.²³⁰ In our sample, 427 people reported having family or friends killed by government forces and 197 people reported having friends or family killed by pro-separatist forces. Among this group, 93 people reported having friends or family killed by both sides. To evaluate, Figure 8 shows the association between having a friend or family member killed and attitudes toward transitional justice.

FIGURE 8. RELATIONSHIP BETWEEN EXPOSURE TO VIOLENCE AND SUPPORT FOR TRANSITIONAL JUSTICE OUTCOMES IN UKRAINE



We find that prior exposure to violence is correlated with support for different transitional justice mechanisms. Individuals who had family members killed

²³⁰ See Bah, *supra* note 204, at 610.

during the conflict in eastern Ukraine exhibited more war fatigue and were more favorable toward amnesty policies relative to comparable respondents.²³¹ Much of this relationship is driven by people who had family killed by the government forces. These individuals were much more likely to support amnesty and less likely to support using international law (though not statistically significant) and Ukrainian law, compared to those who have not had family killed. People who had family killed by the separatist forces were in fact slightly more supportive of trials and less supportive of amnesty than those who have not had family killed, although this difference was not significant.

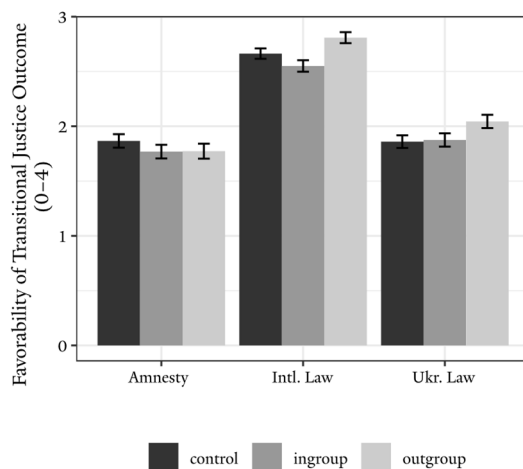
4. *Intergroup Biases*

Finally, to what extent are preferences for transitional justice shaped by intergroup biases? Recall that our survey contained an experiment that asked respondents to think through a hypothetical scenario in which one side committed more war crimes at the end of the conflict. In the survey, we define the “in-group” as respondents who received a vignette indicating that the group that they support committed more war crimes during the conflict. We define the “out-group” as those respondents who received a vignette indicating that the group that they oppose committed more war crimes. For instance, if a respondent answered earlier in the survey that she approves of the separatist movements in Donetsk and Luhansk and then considers the scenario in which separatists committed more war crimes, she will be considered a member of the “in-group.”

Figure 9 shows how perceptions of each transitional justice outcome are associated with being a member of the “in-group” or “out-group.” The figure shows little evidence of in-group favoritism; receiving the in-group treatment does not increase respondents’ support for amnesty policies. However, the results do illustrate some evidence of out-group bias. Being told that the out-group allegedly committed more war crimes increases respondents’ support for international law and Ukrainian law relative to amnesty policies. In short, while there is greater evidence that respondents would like to punish their out-group rather than pardon members of their in-group, it does not appear that intergroup biases are a major driver of attitudes toward transitional justice policies overall.

231. This finding holds in regression analyses that control for other characteristics of respondents that may influence their attitudes toward transitional justice, including views toward the separatist movement, age, education, income, ethnicity, language, religion, sex, region, and employment status.

FIGURE 9. RELATIONSHIP BETWEEN IN-GROUP AND OUT-GROUP IDENTITY TREATMENT AND SUPPORT FOR DIFFERENT TRANSITIONAL JUSTICE MECHANISMS IN UKRAINE



C. Overview of the Iraq Case Study

The Iraq case study examines preferences for punishment and reintegration of members of ISIL, which captured and controlled substantial territory in Iraq from 2014 until its military defeat in 2017.²³² The study focuses on a sample of Iraqis living in areas directly affected by the conflict. We draw on several original studies conducted between 2018 and 2022 that provide insight into Iraqi attitudes toward ISIL combatants as well as civilian “collaborators” and their preferences among different justice mechanisms and actors who are involved in accountability and reintegration processes.

An estimated five million Iraqi civilians lived in areas controlled by ISIL between 2013 and 2016.²³³ Most of the millions of Iraqi civilians who were living in areas captured by ISIL in 2014 did not join the group or commit any other crimes for which they can be prosecuted. Even though these civilians are not criminally liable and many were in fact victims of ISIL’s violence, they are nonetheless

232. See Kao & Revkin, *supra* note 25, at 359; see also Mara R. Revkin & Kristen Kao, *No Peace Without Punishment? Reintegrating Islamic State “Collaborators” in Iraq*, AM. J. COMPAR. L. (forthcoming) (manuscript at 14), <https://ssrn.com/abstract=3659468> [<https://perma.cc/33YG-LCH4>] (discussing the Islamic State’s control from 2014 to 2017 in Iraq).

233. See ERIC ROBINSON, DANIEL EGEL, PATRICK B. JOHNSTON, SEAN MANN, ALEXANDER D. ROTHENBERG & DAVID STEBBINS, *WHEN THE ISLAMIC STATE COMES TO TOWN: THE ECONOMIC IMPACT OF ISLAMIC STATE GOVERNANCE IN IRAQ AND SYRIA 192-94* (2017).

widely perceived by other Iraqis as “collaborators” who are guilty by association due to having lived in areas controlled by ISIL or having family members who joined the group.²³⁴ Civilians with perceived or actual ties to ISIL, many of whom are internally displaced persons (IDPs) living in camps or informal settlements, face numerous barriers to return and reintegration into their areas of origin including social stigmatization, lack of identity documents and other documentation necessary for movement and access to services, and lack of education or vocational training, which make it difficult to obtain employment.

The Iraqi government does not have a formal transitional justice process. Nonetheless, several domestic, international, and customary justice mechanisms are being utilized in the post-ISIL context that can be considered tools for transitional justice despite not being officially named as such. Iraq’s General Amnesty Law of 2016 has been used to pardon some individuals convicted of terrorism-related offenses if they can prove that they joined the terrorist group against their will and did not cause any death or injury.²³⁵ The primary domestic transitional justice tools are the previously mentioned prosecutions under the Anti-Terrorism Law and other domestic laws including the Yazidi Survivors’ Law and Law No. 20 on compensation. The primary international mechanisms are the U.N. Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL (UNITAD) and prosecutions of ISIL members by European courts²³⁶ under the principle of “universal jurisdiction.”²³⁷ In addition to these state-led justice mechanisms, several tribal-law mechanisms and other community-based processes are playing an important role in whether and under what

234. See Patrick Cockburn, *Mosul’s Sunni Residents Face Mass Persecution as Isis ‘Collaborators’*, INDEPENDENT (July 13, 2017, 3:13 PM BST), <https://www.independent.co.uk/news/world/middle-east/mosul-sunni-residents-isis-collaboration-persecution-city-liberation-iraq-fighters-killed-massacres-islamic-state-a7839716.html> [<https://perma.cc/YRD2-C6NZ>] (“Many Iraqis see the inhabitants of Mosul as willing collaborators with Isis . . .”).

235. *Stakeholder Report for the United Nations Universal Periodic Review*, ADVOC. FOR HUM. RTS., WORLD COAL. AGAINST THE DEATH PENALTY & HARM REDUCTION INT’L 3 (Mar. 2019), https://www.theadvocatesforhumanrights.org/Res/iraq_death_penalty_upr_tahr_wcadp_hri_for_website_3.pdf [<https://perma.cc/2VTA-KRJP>].

236. For an example from Germany, see Jennifer Venis, *War Crimes: Universal Jurisdiction Secures Convictions for Genocide Against Yazidi People*, INT’L BAR ASS’N (Aug. 3, 2022), <https://www.ibanet.org/War-crimes-Universal-jurisdiction-secures-convictions-for-genocide-against-Yazidi-people> [<https://perma.cc/BG5H-7FVF>].

237. See *Universal Jurisdiction*, CTR. JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction> [<https://perma.cc/8TRP-FHCP>] (defining “universal jurisdiction” as the international law principle that “certain crimes are so serious that the duty to prosecute them transcends all borders . . . based on the idea that since perpetrators who commit such heinous crimes are *hostes humani generis*—‘enemies of all mankind’—any nation should have the authority to hold them accountable, regardless of where the crime was committed or the nationality of the perpetrator or the victim”).

conditions communities are willing to accept the return and reintegration of perceived “collaborators.”

For comparability with the Ukraine case study, we focus primarily on the results of methodologically similar survey experiments designed with Kristen Kao and conducted in the Iraqi city of Mosul shortly after it was liberated from ISIL (the Mosul survey). We partnered with a local Iraqi research firm²³⁸ to train ten Iraqi researchers from Mosul, who conducted the door-to-door survey between March and April 2018 with a random sample of 1,458 residents of the city. The survey was conducted face-to-face in Arabic using computer tablets.²³⁹

In addition to the survey in Mosul, the case study also draws on qualitative interviews and observations of transitional justice mechanisms including domestic prosecutions and “Local Peace Committees” led by tribal authorities as well as a smaller quantitative survey conducted in partnership with the U.N. Development Programme (UNDP) with a random sample of 399 Iraqis from four small communities in the three provinces in northern Iraq that were most severely affected by the conflict with ISIL: Ninewa (where Mosul is located), Anbar, and Salah al-Din (the site of the UNDP survey).²⁴⁰ More details about the methodology of both surveys are included in the appendix.

D. Results of the Iraq Case Study

The findings speak to the four key debates noted in our literature review and suggest some important differences between Iraq and Ukraine. Furthermore, interviews and surveys in different regions of Iraq with different ethnic and religious compositions and experiences with the conflict indicate that even within the same country and conflict, individuals’ preferences for justice and reintegration of former ISIL members and collaborators can vary significantly depending on identity attributes and personal victimization.

The primary findings include that a majority of Iraqis surveyed (87%) believe that the Iraqi government should be responsible for bringing justice to the victims of ISIL, but many also support a role for the United Nations or some

238. The firm we partnered with was the Independent Institute for Administration and Civil Society Studies. See *Al-Mustakella for Research Group*, INDEP. INST. ADMIN. CIV. SOC’Y STUD., <https://iiacss.org/al-mustakella-for-research> [<https://perma.cc/AP67-3CRD>].

239. In addition to obtaining approval from Yale University’s Institutional Research Board (Protocol #2000022022), we took additional steps to minimize risks to participants including excluding neighborhoods from the sampling frame that had been most severely affected by the battle.

240. Revkin advised UNDP on the design of the survey, which UNDP implemented as part of its social-cohesion programming, as a consultant in 2020–2021 and received IRB approval from Duke University (Protocol #2023-0560) for use of the data.

other international justice mechanism (35%), with somewhat less support (22%) for tribal justice mechanisms. Among respondents in Mosul, preferences for punishment of ISIL combatants and civilian collaborators and potential for reconciliation were driven heavily by the severity of the offense committed. Identity attributes and exposure to harm had only slight or insignificant effects. However, a later study by the humanitarian organization Mercy Corps that replicated Kao and Revkin's survey experiments in a different region of Iraq – Sinjar, where ISIL committed a genocide against the Yazidi ethnoreligious minority group – found preferences for much harsher punishment and refusal to forgive among that population. These varying results indicate the importance of replication and comparative studies at both the subnational level and cross-national level.

1. *Preferences Among Different Justice Mechanisms*

The Mosul survey did not include any questions about international justice mechanisms, but the smaller surveys conducted with UNDP did ask respondents whom they think should be responsible for bringing justice to the victims of the Islamic State (Table 2). This question allowed respondents to select more than one of three answer choices – the Iraqi justice system, the tribal justice system, and the U.N. or an international justice mechanism – reflecting the realities of legal pluralism in Iraq. Tribal and state justice systems overlap and often coordinate, meaning that Iraqis may have a preference for both. The third answer choice, the U.N. or an international justice mechanism, is meant to capture a range of actual international justice mechanisms currently present in Iraq, including the Baghdad-based UNITAD and several other U.N. agencies that are implementing programming related to transitional justice for victims of ISIL,²⁴¹ as well as hypothetical mechanisms that have been proposed including a potential hybrid Iraqi-international tribunal.²⁴²

241. See, e.g., *Toward Comprehensive Rehabilitation: Mental Health Service Referral System Launched for Genocide Survivors in Iraq*, INT'L ORG. FOR MIGRATION IRAQ (Mar. 28, 2023), <https://iraq.iom.int/news/toward-comprehensive-rehabilitation-mental-health-service-referral-system-launched-genocide-survivors-iraq> [<https://perma.cc/XWN7-7AUy>] (discussing the commitment of the International Organization for Migration Iraq “to a trauma-informed, survivor-centered transitional justice process”); *Support for Integrated Reconciliation in Iraq (SIRI)*, U.N. DEV. PROGRAMME IRAQ 1 (Dec. 2017), <https://www.undp.org/sites/g/files/zskgke326/files/migration/iq/UNDP-IQ--Fast-Facts--SIRI-Reconciliation--20171105.pdf> [<https://perma.cc/9FB2-82MA>] (describing UNDP's work “preparing the ground for transitional justice whilst supporting urgently needed community-based conflict resolution”).

242. See Anthony Dworkin, *A Tribunal for ISIS Fighters?*, EUR. COUNCIL ON FOREIGN RELS. (May 31, 2019), https://ecfr.eu/article/commentary_a_tribunal_for_isis_fighters [<https://perma.cc/5WYX-7A95>].

A majority (87%) favored the Iraqi justice system, but many also support a role for the United Nations or some other international justice mechanism (35%), with somewhat less support (22%) for tribal justice mechanisms. Unsurprisingly, support for tribal justice mechanisms was significantly higher (53% compared with 81% favoring the Iraqi justice system) among the subset of respondents in Anbar province (approximately half of the sample),²⁴³ the most tribal of the three regions surveyed.²⁴⁴

Interestingly, when the same respondents were asked which actors should be responsible for deciding if families with perceived ties to ISIL should be allowed to return to their communities, support for tribal justice mechanisms was significantly higher overall (42% compared with 80% favoring the Iraqi government), and even higher among the subset of respondents in Anbar (76%). The higher level of support for the role of tribal justice in reintegration, as compared with punishment of perpetrators, may simply reflect the realities of the current division of labor and balance of power between the Iraqi government and tribal authorities.

TABLE 2. ATTITUDES TOWARD REINTEGRATION AND JUSTICE (UNDP SURVEY, 2022)

<i>Number of Respondents: N=399</i>		
Who do you think should be responsible for deciding if families perceived as affiliated with ISIL should be allowed to return to this community?	The Iraqi government	80%
	Iraqi security forces	50%
	Iraqi judicial system	48%
	Tribal leaders	42%
	U.N. agencies or international NGOs	33%
	Religious leaders	22%
	Members of your community	19%
	Victims' families	16%
	Popular Mobilization Forces (PMF)	8%
Who do you think should be responsible for bringing justice to the victims of ISIL?	Iraqi judicial system	87%
	The U.N. or an international justice mechanism	35%
	Tribal justice system	22%

243. See *infra* Appendix B.

244. See 2 *AL-ANBAR AWAKENING: IRAQI PERSPECTIVES FROM INSURGENCY TO COUNTERINSURGENCY IN IRAQ, 2004-2009*, at 3 (Gary W. Montgomery & Timothy S. McWilliams eds., 2009) (“Al-Anbar is the most tribal of the 18 provinces of Iraq.”).

Although tribal justice mechanisms have been used to punish alleged ISIL perpetrators through temporary or permanent banishment from communities or revenge killings, the vast majority of alleged ISIL combatants (at least 19,000 as of 2018) have been detained and prosecuted by the Iraqi government.²⁴⁵ However, tribal justice is very influential in the reintegration of IDPs who are perceived as civilian collaborators or believed to have family ties to ISIL.²⁴⁶ Although the Iraqi government conducts security screenings to clear these IDPs for return, local tribal authorities decide whether to accept or reject these returnees.²⁴⁷

Overall, the level of support for the Iraqi government is surprisingly high given many previous surveys finding low levels of trust in courts and police²⁴⁸ and may reflect social-desirability bias given that the survey was administered by uniformed UNDP staff in areas where UNDP is implementing peacebuilding programs. Even though enumerators explained to participants during the informed-consent process that the survey was completely voluntary and that their responses would not affect the likelihood of receiving assistance from UNDP, surveys conducted by humanitarian organizations are susceptible to bias because respondents tend to answer questions strategically in the hopes of influencing the organization's programming and levels of assistance to their community.²⁴⁹

2. *The Limits of Forgiveness*

The Mosul survey included a survey experiment designed to estimate the causal effects of different attributes of hypothetical Islamic State “collaborators”

245. See Qassim Abdul-Zahra & Susannah George, *Iraq Holding More than 19,000 Because of IS, Militant Ties*, ASSOCIATED PRESS (Mar. 21, 2018, 8:43 PM EDT), <https://apnews.com/aeece6571de54f5dba3543d91deed381/Iraq-holding-more-than-19,000-because-of-IS,-militant-ties> [<https://perma.cc/MR29-AC9K>].

246. See *infra* Figure 10 and note 251 and accompanying text.

247. See Bobseine, *supra* note 116, at 2 (“[T]ribes are pivotal in facilitating – and sometimes blocking – the return of more than 1.5 million IDPs.”).

248. See Michael Moss, *How Iraq Police Reform Became Casualty of War*, N.Y. TIMES (May 22, 2006), <https://www.nytimes.com/2006/05/22/world/middleeast/22security.html> [<https://perma.cc/22NQ-E8D4>] (citing a 2006 internal police survey in Baghdad, which found that “75 percent of Iraqis did not trust the police enough to tip them off to insurgent activity”).

249. Sandie Walton-Ellery, *Questionnaire Design: How to Design a Questionnaire for Needs Assessments in Humanitarian Emergencies*, ACAPS 7 (July 2016), <https://gbvaor.net/sites/default/files/2019-07/1607%20ACAPS%20Questionnaire%20Design%20for%20Needs%20Assessment.pdf> [<https://perma.cc/KG74-GGRN>] (“Another important source of bias arises from the respondents’ correct assumption that the allocation of relief will be guided by relative severity, and the incorrect inference that their own exaggerations will improve their chances of increasing support.”).

on respondents' preferences for justice. The survey was programmed to generate profiles of hypothetical collaborators by randomly selecting from among the attributes listed in Table 3.

TABLE 3. RANDOMIZED COLLABORATOR ATTRIBUTES

Dimension	Attributes
Gender	Man
	Woman
Age	15
	35
Tribal Group	Respondent's tribal group
	Member of another tribe
Type of Collaboration	Islamic State fighter
	Cook for Islamic State fighters
	Married to Islamic State fighters
	Janitor for Islamic State municipality
	Resident of Mosul who paid taxes to the Islamic State

Enumerators read the following prompt to respondents:

I am going to read you some hypothetical scenarios about people from Mosul who are being prosecuted for their past cooperation with Daesh [ISIL]. These people now want to move back into your neighborhood. I would like you to choose the type of punishment that you view as appropriate for this person. The person is a [insert randomized profile].

After the enumerators described the profile of the hypothetical collaborator, which was instantaneously generated by the tablet through random selection of the attributes above, they informed respondents:

A thorough investigation concluded that this is the only act of collaboration that the person committed. I have ordered the following punishments from least harsh to most harsh. I would like you to choose the type of punishment you deem appropriate for this former Daesh [ISIL] collaborator, who now wants to move back into your neighborhood.

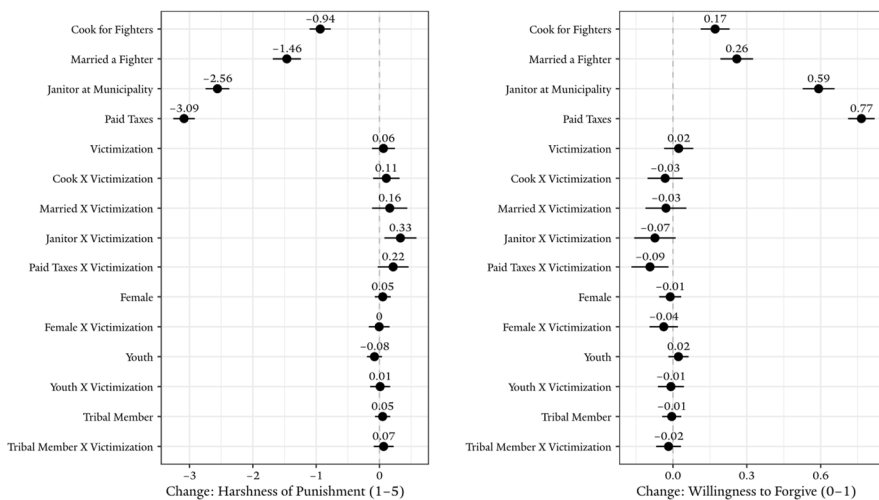
The responses to this question were the basis for measuring our dependent variable, preferences for justice, from among the following options: no punishment necessary (least harsh), mandatory community service (e.g., picking up

trash, rebuilding homes) for six months, imprisonment for three years, imprisonment for fifteen years, and capital punishment (most harsh). All these punishments are realistic in the Iraqi context. We found that preferences for punishment of former ISIL combatants are overwhelmingly harsh but less punitive than the Iraqi government's broad and status-based Anti-Terrorism Law, which requires a minimum of a life sentence up to capital punishment for any member or supporter of a terrorist group regardless of evidence of participation in violence or other crimes. This is an example of a "justice gap" – a disparity between victims' preferences for justice and actual outcomes – that scholars have suggested may contribute to cycles of revenge if unresolved.²⁵⁰

The most important determinant of preferences for punishment and reintegration across these various studies was the severity of the offense (i.e., type of collaboration). For example, ISIL taxpayers received, on average, punishments that are nearly three levels less harsh compared to those desired for fighters, which, on our five-point scale, is the difference between six months of community service and capital punishment. The effects of identity attributes (i.e., age, gender, and tribal in-group) were either slight or insignificant (Figure 10). Although generally unforgiving of former combatants, communities were overwhelmingly willing to allow the return and reintegration of nonviolent civilian "collaborators" (i.e., employees of ISIL's civilian bureaucracy including municipal workers and cooks, taxpayers, and family members of ISIL fighters).

250. See EVERETT L. WORTHINGTON, JR., *FORGIVENESS AND RECONCILIATION: THEORY AND APPLICATION* 62 (2013) (warning that "[i]f the gap persists, it can lead to . . . vengeful motivation").

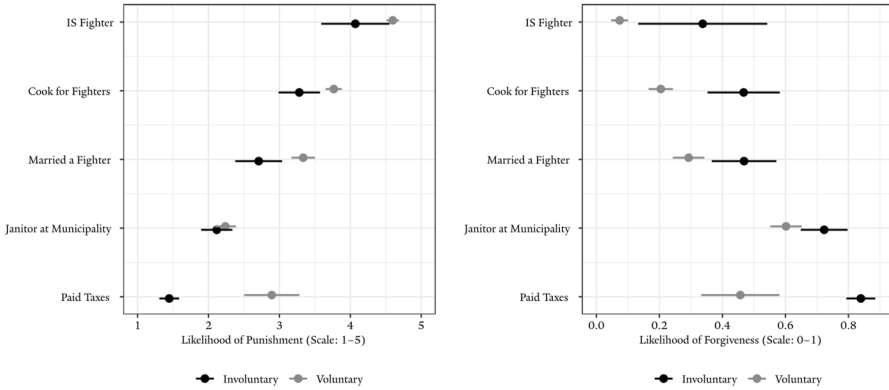
FIGURE 10. ASSOCIATIONS BETWEEN RESPONDENT CHARACTERISTICS AND THE PROBABILITY OF REINTEGRATION AND FORGIVENESS OF FORMER ISIL COLLABORATORS²⁵¹



Another key finding is that the perceived voluntariness of collaboration shapes respondents’ preferences for punishment and forgiveness. On average, if an act is perceived as voluntary, the respondent chooses a punishment that is 0.53 points harsher (11% of the five-point scale) and is 20 percentage points less likely to forgive the collaborator (Figure 10). Substantively, this means that people who paid taxes to ISIL receive a punishment that is 1.42 points harsher (28% of the five-point scale) when they are perceived as having voluntarily paid taxes compared with those who paid involuntarily. Voluntary tax payment is treated as harshly as involuntary participation in acts of collaboration that directly support fighters (i.e., being a cook or married to a fighter).

251. Figure 10 depicts point estimates (circles) with 95% confidence intervals (horizontal lines). Robust standard errors are clustered at the individual level. This figure presents the results from regression analyses of two outcomes: harshness of punishment and willingness to forgive. These outcomes are regressed on the interaction of victimization with each of gender, age, tribal group, and type of collaboration (as well as the lower terms for all these variables) as outlined in Table 3. The baseline (noninteraction) categories describe the conditional relationship between each attribute (for example, type of collaboration) and the outcome for nonvictimized individuals. The interaction terms indicate the difference in the slopes between those who are victimized and those who are not. Figure 10 is reproduced with data from Kao & Revkin, *supra* note 25, with permission from the authors and Wiley.

FIGURE 11. PERCEIVED VOLUNTARINESS OF COLLABORATION AND LIKELIHOOD OF PUNISHMENT AND FORGIVENESS



A second survey experiment by Revkin and Kao found some noncausal evidence that community-based and customary justice mechanisms (endorsements by local tribal and religious leaders) may be associated with greater acceptance of reintegration as measured by respondents’ willingness to allow former collaborators to be their neighbors. Among respondents who initially rejected their hypothetical candidates for reintegration (around 70% of our sample), 8% are willing to change their judgment and support reintegration if asked to do so by their tribal leader or religious leader. Another 10% of respondents were willing to change their judgment and support reintegration if the former collaborator completes a rehabilitation program (Table 4). Together, the combined effects of local-leader endorsements and rehabilitation programs persuade around 15% of people who were previously opposed to reintegration to change their judgment and allow former collaborators to return to their home communities.²⁵²

TABLE 4. THE EFFECTS OF DIFFERENT MECHANISMS ON ACCEPTANCE OF REINTEGRATION

Mechanisms Facilitating Reintegration	Percent of Respondents Who Change Attitude to Acceptance of Reintegration
Tribal leader endorses reintegration	7.8%
Religious leader endorses reintegration	8.2%
Completion of rehabilitation program	9.8%

252. See Revkin & Kao, *supra* note 232 (manuscript at 48).

The UNDP survey found similarly high levels of willingness to reintegrate IDPs with family ties to ISIL, a population of mostly female-headed households who are generally not perceived by communities as a security threat, but only after meeting certain conditions. A majority of respondents believed that these potential returnees should undergo psychological rehabilitation (72%) and disavow their family members in court through a hybrid tribal-state justice mechanism known as *tabri'yya* (69%), and a significant minority (43%) believed that they should publicly apologize (Table 5). Importantly, the vast majority did not think it was necessary for them to be prosecuted or serve a prison sentence as a condition for return. In questions about hypothetical IDPs with family ties to ISIL who varied in age, gender, and the voluntariness of their ties to ISIL (Table 6), children were by far the most likely to be allowed to return to their communities (83%) followed by women who were involuntarily married to ISIL members but did not personally support the group (79%) and young men in their twenties with family members who joined ISIL (57%).²⁵³ Women who were voluntarily married to ISIL members and personally supported the group were by far the least likely to be allowed to return (only 17%).

TABLE 5. NECESSARY CONDITIONS FOR REINTEGRATION (UNDP SURVEY, 2022)

<i>Number of Respondents: N=399</i>		
Which of the following conditions do you believe that people with family ties to ISIL should fulfill before being allowed to return to their communities?	Psychological rehabilitation	72%
	Disavow family in court	69%
	Public apology	43%
	Community service	9%
	Pay compensation	8%
	Short prison sentence (1-5 years)	3%
	Long prison sentence (5+ years)	3%

253. The survey questions about young men and children did not specify the voluntariness of their family ties to ISIL. For more detailed results, see *Perception Surveys Report*, *supra* note 25.

TABLE 6. VARIATION IN ACCEPTANCE OF IDPS BY AGE, GENDER, AND VOLUNTARINESS OF TIES TO ISIL

Acceptance of different categories of hypothetical IDPs with family ties to ISIL	Children	83%
	Young men (20s)	57%
	Wives who did not support ISIL (involuntary)	79%
	Wives who supported ISIL (voluntary)	17%

3. *Victimization and Exposure to Harm*

Contrary to many previous studies,²⁵⁴ respondents who were personally victimized by ISIL (as measured by self-reported deaths or injuries of family members caused by ISIL) did not have a significant effect on preferences for punishment or reintegration. However, a study by Mercy Corps, which replicated our experiment with a sample of Yazidis who were victims of a genocide by ISIL, found harsher preferences for punishment and strong opposition to reintegration of Sunni Arabs perceived as collaborators.²⁵⁵ A similar experiment conducted in another Iraqi city, Baghdad, that was not directly affected by the conflict found a greater willingness to forgive.²⁵⁶ These varying results suggest that the effects of harm on acceptance of reintegration depend on the magnitude of harm inflicted as well as ethnic and religious identity, as discussed below.

4. *Intergroup Biases*

The Mosul survey sample was almost entirely Sunni Arabs and, therefore, we were not able to examine the effects of religious- or ethnic-group identity on preferences for justice or reintegration. We did assess the effects of tribal identity to see if respondents would be more forgiving of members of their own tribe as compared with members of other tribes, but the results were insignificant – most

254. See, e.g., Jonathan Hall, Iosif Kovras, Djordje Stefanovic & Neophytos Loizides, *Exposure to Violence and Attitudes Towards Transitional Justice*, 39 POL. PSYCH. 345, 345 (2018) (discussing a study of public attitudes towards transitional justice policies in Bosnia finding an association between exposure to violence and more support for retributive justice measures).

255. See *Towards Durable Solutions to Displacement: Understanding Social Acceptance of Returnees in Post-ISIL Iraq*, MERCY CORPS (2021), https://www.mercycorps.org/sites/default/files/2021-11/Towards-Durable-Solutions_Iraq_Mercy-Corps_11-21.pdf [https://perma.cc/BS6P-SMNS].

256. See Kristen Kao, Kristin Fabbe & Michael Bang Petersen, *The Irredeemability of the Past: Determinants of Reconciliation and Revenge in Post-Conflict Settings* 10 (May 31, 2023) (unpublished manuscript), <https://ssrn.com/abstract=4465543> [https://perma.cc/A4SL-KDJB].

likely because tribal identity is not nearly as salient as sectarian identity in the Iraqi context.²⁵⁷

In a second experiment on attitudes toward reintegration, Revkin and Kao found that women were in fact *less* likely to allow the reintegration of former ISIL collaborators by 6% on average.²⁵⁸ This finding might be explained by the varying experiences of men and women living in ISIL-controlled areas. In general, women were more negatively affected by ISIL than men given the group's extremely patriarchal ideology, which severely restricted the rights of women by, for example, prohibiting them from leaving their homes without a male guardian.²⁵⁹ The Mercy Corps study, which replicated our experiment with a Yazidi sample, found even more significant gender differences: women were much less supportive of reintegration than Yazidi men, suggesting that the nature of harm (in this case, sexual violence) also matters.²⁶⁰

E. Implications for Iraq and Ukraine

Our comparison of the cases of Ukraine and Iraq reveals some cross-cutting issues but also important differences in attitudes. Given that we designed our studies independently and our variables of interest and measurement strategies are not perfectly comparable, we discuss these similarities and differences cautiously, with the goal of suggesting future directions for comparative research including these and other cases.

Both Iraq and Ukraine have undergone transitions to democracy, but at different times and from different types of regimes. In Iraq, the former Ba'athist dictatorship of Saddam Hussein was overthrown in 2003. In Ukraine, the country became independent in 1991 following the dissolution of the Soviet Union. Neither country is generally considered to have achieved a stable, consolidated democracy, and both face internal challenges with respect to government corruption and legacies of identity-based conflict. Weak rule of law is an issue in both countries, but to a greater extent in Iraq, which has a long tradition of tribal

257. Surveys have consistently found that Iraqis rate their sect as a more important component of their identity than their tribe. See *Iraq Post-Daesh: Improved Social Cohesion, but Iraqis Remain Dissatisfied with Government*, NAT'L DEMOCRATIC INST. 26 (July 2019), <https://www.ndi.org/sites/default/files/NDI%20Poll%20-%20July%202019%20%28English%29.pdf> [<https://perma.cc/PM5S-94UN>].

258. See Revkin & Kao, *supra* note 232 (manuscript at 42).

259. See Mara Revkin, *The Legal Foundations of the Islamic State*, BROOKINGS INST. 16 (July 2016), https://www.brookings.edu/wp-content/uploads/2016/07/Brookings-Analysis-Paper_Mara-Revkin_Web.pdf [<https://perma.cc/QK2Y-VEAT>].

260. See *Towards Durable Solutions*, *supra* note 255, at 28.

justice in areas where the state has limited presence and increasingly powerful militias operate with impunity.

In the context of incomplete democratic consolidation and economic and political grievances, nostalgia for the previous regimes – in Iraq, for authoritarianism,²⁶¹ and in Ukraine, for the Soviet Union²⁶² – has historically been observed among some populations in both countries. However, Russia’s recent full-scale invasion in 2022 dramatically reduced Soviet nostalgia in Ukraine. Ukrainians’ overall confidence in their national government increased substantially, from 8% in 2018 to 60% in 2022.²⁶³ Likewise, 96% of Ukrainians in 2022 reported that they disapproved of Russian leadership (up from 66% in 2020 and 21% in 2010).²⁶⁴

One of the most interesting points of divergence across the two studies was the question of who should administer justice. In the Ukrainian sample, the majority of respondents in the Donbas region preferred international legal mechanisms to Ukrainian law, irrespective of their attitudes toward the conflict. In the Iraqi sample, a large majority of respondents favored the Iraqi justice system over international justice mechanisms, but there was still considerable support for tribal justice mechanisms, suggesting that many Iraqis are interested in alternatives to the state justice system. In the immediate aftermath of ISIL’s defeat, some Iraqis turned to vigilantism and extrajudicial executions of alleged ISIL combatants and civilian collaborators on the grounds that they could not trust the formal justice system to deliver justice due to its corruption and limited capacity. As one Iraqi explained in 2017, “[Corruption] is why Iraqi soldiers prefer to shoot them or throw them off high buildings.”²⁶⁵ Another said of individuals currently awaiting trial, “[W]e don’t want them to go to jail because they will be let out.

261. See Alshamary, *supra* note 19, at 157.

262. See David Masci, *In Russia, Nostalgia for Soviet Union and Positive Feelings About Stalin*, PEW RESEARCH CENTER (June 29, 2017), <https://www.pewresearch.org/short-reads/2017/06/29/in-russia-nostalgia-for-soviet-union-and-positive-feelings-about-stalin> [https://perma.cc/KX85-C4ZL] (observing that thirty-four percent of people in Ukraine say that the breakup of the Soviet Union was “a bad thing” for their country).

263. See Galina Zapryanova, *Ukrainians Rally Despite Economic Hardship*, GALLUP (Oct. 20, 2022), <https://news.gallup.com/poll/403649/ukrainians-rally-despite-economic-hardship.aspx> [https://perma.cc/W2ZP-7YVX].

264. See Julie Ray, *Ukrainians Denounce Kremlin, Pivot to U.S.*, GALLUP (Oct. 19, 2022), <https://news.gallup.com/poll/403490/ukrainians-denounce-kremlin-pivot.aspx> [https://perma.cc/W2ZP-7YVX].

265. See Patrick Cockburn, *More than Just Revenge: Why Isis Fighters Are Being Thrown off Buildings in Mosul*, INDEPENDENT (July 17, 2017, 16:26 BST), <https://www.independent.co.uk/news/world/middle-east/isis-mosul-iraq-fighters-killed-thrown-off-buildings-reasons-corruption-revenge-patrick-cockburn-a7845846.html> [https://perma.cc/94DT-Y99Q].

It's better for them to be killed.”²⁶⁶ In Ukraine, reports of extrajudicial killings of suspected collaborators by “hit squads”²⁶⁷ suggest that in both contexts, concerns about corruption and the effectiveness of state police and courts may contribute to support for alternative justice mechanisms, whether international or customary.

There were also some similarities across the studies. In general, both Ukrainians and Iraqis expressed a strong desire for accountability as opposed to policies that would enable “forgiving and forgetting.” Ukrainians were largely critical of amnesty policies that would pardon fighters that took up arms during the conflict. Iraqis desired harsh punishment for ISIL collaborators and especially for ISIL fighters. Another consistent finding across both cases was that intergroup biases were not a major driver of attitudes toward transitional justice. To a certain extent, this finding is somewhat surprising, given the extensive literature on intergroup bias in other contexts. Shared identity—in Ukraine, shared ethnicity, region, or sympathies with the separatist movement, and, in Iraq, shared tribal membership—was not strongly correlated with preferences over transitional justice policies.

V. PRESCRIPTIVE IMPLICATIONS FOR LAW AND POLICY

This Feature explained that understanding public attitudes toward transitional justice is important because it gives agency to victims of conflict. At the same time, excessive reliance on public opinion may risk leading to mob justice or the persecution of minorities. How can policymakers balance these considerations in designing transitional justice processes? We offer several uses for public opinion research and possible pathways forward.

First, policymakers, humanitarian actors, and academic researchers should draw on public opinion, including focus groups and surveys, to identify needs of victims, as argued in Section II.B. The experiences of victims of persecution and violence vary widely, making it difficult to develop a standardized solution for victims everywhere. Public opinion surveys are uniquely helpful in understanding the diversity of victims’ attitudes and experiences, which can be used to inform the creation of transitional justice laws and policies before they are implemented.

266. See *Mosul and Tel Afar Context Analysis*, RISE FOUND. 26 (Dec. 2017), <http://rise-foundation.org/wp-content/uploads/2017/12/Rise-Mosul-and-Tel-Afar-Context-Analysis-Rise-December-2017.pdf> [<https://perma.cc/Z6LQ-3LM6>].

267. See David L. Stern, *Ukrainian Hit Squads Target Russian Occupiers and Collaborators*, WASH. POST (Sep. 8, 2022, 2:00 AM EDT), <https://www.washingtonpost.com/world/2022/09/08/ukraine-assassinations-occupied-territory-russia> [<https://perma.cc/47AS-CSUW>].

Second, policymakers should use public opinion surveys to assess public awareness of and education about transitional justice policies. The results of such surveys could be used to develop educational programs or other awareness campaigns that improve public knowledge of and access to justice processes. Education, one of the functions of truth commissions, can also play an important role in preventing the recurrence of past atrocities, as we noted in Section III.B. 3.

Third, actors involved in the implementation of transitional justice policies should collect ongoing feedback about how these policies affect citizens in practice. Many studies discussed in this Feature emphasized how attitudes changed as transitional justice policies and programs were rolled out—sometimes for the worse when these interventions failed to live up to expectations, as was the case among some victims of apartheid in South Africa,²⁶⁸ or were criticized for corruption, as in Cambodia.²⁶⁹ These findings suggest that engagement with the victims and the wider public should be maintained over time. Ongoing feedback could come in the form of polls, interviews, and open consultations to hear people’s concerns about the justice process and address any fears they may have. Consultations can also be used to clarify legal or abstract issues related to how transitional justice should be implemented. Retrospective surveys conducted at different points in time after transitional justice policies were implemented—ideally, longitudinal “panel” surveys of the same respondents over time—can help researchers to better identify “lessons learned” from a given post-conflict setting, contributing to generalizable knowledge.²⁷⁰

Finally, our systematic literature review identifies some stark disparities in the representation of scholars and institutions who produce empirical scholarship on transitional justice. The vast majority of studies are produced by scholars at institutions in the United States, Canada, and Western Europe for English-language journals. By contrast, little scholarship is published by scholars from countries that are more directly impacted by transitional justice. To address these inequalities, we recommend more funding and capacity-building programs for scholars and research institutions in countries affected by transitional justice processes, whose perspectives are particularly valuable but are underrepresented in the literature.

268. Backer, *supra* note 6.

269. Mydans, *supra* note 7; Mydans, *supra* note 8.

270. A rare example of such a longitudinal survey on transitional justice is David Backer’s study in South Africa cited above. Backer, *supra* note 6.

CONCLUSION

Many major theories and tools of transitional justice originated in the 1980s and 1990s. Our systematic review of 329 empirical studies of transitional justice revealed that there has since been significant progress toward investigating causal effects of transitional justice policies and mechanisms – both intended and unintended, both positive and negative. Increasingly, researchers focus on public opinion in conflict-affected areas, using a variety of qualitative and quantitative methods to understand how transitional policies are perceived by their potential beneficiaries. Public opinion research can help to legitimize the implementation of transitional justice policies and increase buy-in from local populations.

At the same time, public opinion research is not a panacea. This Feature emphasized many pitfalls of microlevel empirical studies of transitional justice. Survey research in conflict-affected areas can be costly, difficult, and, in some cases, even harmful to participants or researchers. Researching vulnerable populations raises logistical and ethical questions that require careful consideration. Compelling surveys are also difficult to design and execute. For instance, researchers may introduce bias by relying on retrospective questions or asking sensitive questions, particularly in nondemocratic contexts.

Even well-designed surveys face challenges with external validity, or the ability to make generalizable claims beyond the survey sample. Comparing attitudes across different countries is especially challenging given that studies measure key concepts differently. Some multicountry studies have attempted to address this problem in related areas of research. For example, the Metaketa Initiative organized by Evidence in Governance and Politics conducts multicountry randomized control trials to study the causal effects of programmatic interventions that seek to improve governance and promote accountability in different contexts with a focus on developing and conflict-affected countries.²⁷¹

Variation within and across countries as well as over time is one reason why many foundational debates about the efficacy of transitional justice policies and procedures remain unanswered. The similarities and differences across our survey findings in Ukraine and Iraq illustrate the highly contextual nature of transitional justice policies. The results emphasize the importance of understanding public attitudes in the communities directly impacted by such policies and programs. It is our hope that this Feature will provide guidance to the next generation of scholars and practitioners working to develop evidence-based transitional justice policies.

271. See *Our Work: Metaketa Initiative*, EVIDENCE GOVERNANCE & POL., <https://egap.org/our-work/the-metaketa-initiative> [<https://perma.cc/F7C5-T7WZ>].

APPENDIX*A. Replication Materials*

All replication materials including survey questionnaires, data, and code are available at the *Yale Law Journal's* Dataverse at the following link: <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/CGWGDO>

*B. Systematic Literature Review**1. Search Terms and Methodology*

We used the Boolean search terms below to search the following academic databases: Academic Search Complete, ProQuest, Web of Science, Scopus, HeinOnline, and JSTOR. The basic search string is written as follows, with slight modifications as required by the different search engines:

[ALL=((“transitional justice” OR “restorative justice” OR “transformative justice” OR “post-conflict justice”) AND survey OR interviews OR empirical OR “focus group” or “text analysis”)]

We attempted to capture non-English language articles using the modified search string below in the foreign-language database vLex, which uses an artificial-intelligence (AI) translation program (“Vincent”) that is capable of translating the full text of search results in thirteen languages: Arabic, Catalan, Chinese, Dutch, English, French, Galician, German, Italian, Portuguese, Russian, Spanish, and Swedish.

All Words: empirical OR study

Words in Proximity: [transitional justice]/3²⁷²

Any Word: survey interview questionnaire

The vLex search string is written as:

[ALL=((empirical [[transitional justice]/3] (survey OR interview OR questionnaire)))]

272. Searches for the words “transitional” and “justice” with up to three words between them.

2. Key Attributes Coded in Literature-Review Dataset

We trained a team of research assistants to code different attributes of each article. The key attributes used to generate the figures in the article are listed below, and our complete codebook is included in the replication files:

- Authors' names.
- Authors' universities at the time of publication.
- Countries of authors' universities.
- Year of publication.
- Journal's name: We include only articles published in academic journals, or working papers that are forthcoming or conditionally accepted at journals.
- Authors' field (e.g., political science, public health, psychology): Determined by field of Ph.D. or other highest degree and/or current academic department.²⁷³
- Country of study: Where the population being studied is from (usually the same as where the data was collected except for studies of refugees, see below). If more than one country, list with semicolons.
- Country where data was collected, if different (e.g., studies of refugees)
- Research method: survey, survey experiment, field experiment, natural experiment, lab-in-the-field experiment, interviews, focus groups, participant observation, text analysis.
- Type of analysis: quantitative, qualitative, or mixed (quantitative and qualitative).
- Data collection year.
- Transitional justice mechanism: international prosecutions, domestic prosecutions, hybrid courts, truth-seeking, apologies, amnesty, peace agreements, reintegration, memory, compensation (monetary), property (land restitution or other restoration of property rights), customary (referring to nonstate traditional, religious, or community-based mechanisms), dialogue, community service, institutional reform

273. We describe fields as they are listed in Elsevier's Digital Commons Three-Tiered Taxonomy of Academic Disciplines, see *Digital Commons Three-Tiered Taxonomy of Academic Disciplines*, DIGIT. COMMONS (Oct. 2023), https://static.helpjuice.com/helpjuice_production/uploads/upload/image/15882/3552993/1697158961454-DC%2BDisciplines%2Btaxonomy.pdf [<https://perma.cc/L8Z8-9CRT>]. For interdisciplinary departments or degrees that do not appear on this list, we code the most similar field. For example, a Ph.D. from Coventry University's Centre for Trust, Peace and Social Relations is coded as Peace and Conflict Studies.

(legal or political), personnel reform (vetting or “lustration”), sanctions (refers to international sanctions).

- Language: The language of the original article if translated from another language into English.²⁷⁴

3. *Coding Decisions*

This Section summarizes significant coding decisions:

- International relations, international studies, and international affairs are all coded as “international relations.”
- Public policy, public management, and public administration are all coded as “public policy.”
- “Customary” transitional justice mechanisms are coded to include customary law as well as religious and tribal mechanisms.

4. *Quality Control*

Our objective is to review literature related to transitional justice from peer-reviewed journals across academic disciplines. At the same time, we recognize that this is one of the first efforts to conduct a comprehensive interdisciplinary review of articles on this topic, and we have almost certainly missed many important articles through our search. As a result, we hope that this can be viewed as a first step in a larger process that will be completed by scholars to gather the full set of articles on transitional justice. We cast a wide net in an attempt to map the field comprehensively, and our analysis gives equal weight to each article in our dataset. Citation counts and journal rankings are usually but not always a reliable indicator of quality, and privileging these metrics can lead to the marginalization or exclusion of alternative perspectives and methods that may offer important insights and critiques of traditional approaches.²⁷⁵

274. Some regional journals publish in English but translate the abstracts and titles of articles into the relevant local non-English language. For example, *Universitas Psychologica* publishes in English but translates titles and abstracts into Spanish. We code articles as English unless the entire article is available in a non-English language. Articles published fully in two languages are coded with both languages.

275. See Maja Davidović & Catherine Turner, *What Counts as Transitional Justice Scholarship? Citation Recognition and Disciplinary Hierarchies in Theory and Practice*, 67 *INT’L STUD. Q.* 1, 1 (2023) (noting that the “canonization” of the most cited articles “comes at the expenses of alternative approaches that challenge the core assumptions of the field”); see also Mariam

Our inclusive approach does raise a potential concern about variation in the quality of studies included. As noted in our Feature, we believe it is important that research on transitional justice be both methodologically rigorous and ethical. We use a quality-control proxy based on methodological transparency to exclude studies that either do not specify a precise sample size of respondents or rely on a very small sample size of fewer than eight respondents. While recognizing that quantity is not necessarily an indicator of quality, we established this minimum threshold after our initial search yielded several studies that included only a few interviews cited as anecdotal evidence without a clear research design. We did include several studies that did not provide a precise count of all interviews, a common practice in anthropology, where footnotes or other information made clear that the study relies on at least eight interviews.

We also excluded a small number of studies that use existing survey data on general attitudinal outcomes, such as “social trust,” as indirect proxies for attitudes toward transitional justice, but we do include studies that reanalyze previous surveys that ask questions specifically about transitional justice.

5. *Non-English-Language Sources*

We attempted to include a sample of non-English-language articles in our review and identified twenty-six articles that met our search criteria (12 in Spanish, 4 in Arabic, 3 in French, 2 in Lithuanian). However, we cannot claim that this is a comprehensive or representative sample of all relevant non-English sources for several reasons including:

- Some smaller journals are established but disappear quickly due to insufficient resources or instability, particularly in conflict-affected and developing countries.
- Many smaller journals are not available digitally and are not listed in the databases consulted. (Although Academic Search Complete, ProQuest, and JSTOR do include some non-English results, these only capture titles and abstracts that have been translated into English.)

Salehi, *Confined Knowledge Flows in Transitional Justice*, TERRITORY, POL., GOVERNANCE 1, 15 (2023) (referencing the “knowledge politics” of transitional justice scholarship).

Even with AI-assisted translation by VLex, “transitional justice” and other abstract concepts often do not have a one-to-one literal translation or may have multiple synonyms. Nonetheless, our incomplete sample of non-English articles points to a rich and growing body of empirical research on transitional justice that could be translated and disseminated to a global audience. Future systematic literature reviews should attempt to conduct a more comprehensive search of non-English sources.

C. Original Surveys in Ukraine and Iraq

1. Ukraine Survey: Methodology and Additional Results

We collaborated with Kyiv International Institute of Sociology, a survey firm based in Kyiv, Ukraine, to conduct the survey in Ukraine between April and June 2017. Due to the lack of detailed demographic data for eastern Ukraine, particularly in areas under separatist control, we turned to two sources for demographic information. First, we used data from the official Ukrainian state census. Although the most recent census was carried out in 2001, the state statistical services have annually updated this data using birth and death records to provide an estimated distribution of sex and age. Second, we referred to data from the Central Election Commission, which helped us to understand the distribution of settlement types within each oblast. Due to limitations in these sources, the survey should not be viewed as necessarily representative of the local population. Still, the experimental results are internally valid, and the survey provides valuable insights into the views of Ukrainians living in the conflict zone.

The survey firm conducted brief computer-assisted telephone interviews (CATIs), which were followed by more comprehensive online surveys for consenting adults aged 18 to 65. For the CATIs, they employed random-digit dialing with geographic area codes to reflect the different oblasts. After gathering demographic data, respondents were offered a small monetary incentive to complete an online survey. This survey was made available in Ukrainian and Russian and was accessible via both mobile devices and computers. Payments were made to the respondents through SMS text messages upon their completion of the survey.

Recruitment of respondents was designed to meet quotas for age, gender, and geographic location. Although our sample satisfied these quotas, it is important to recognize inherent biases, as access to phone was a prerequisite for participation and compensation. Specifically, our sample tended to be more

educated and wealthier on average. Therefore, the results of this analysis should not be considered representative of the national population.

The experimental treatment assigned people to one of three conditions: 1) being told that government forces committed the majority of war crimes; 2) being told that separatist forces committed the majority of war crimes; and 3) being told that both sides committed war crimes at equal rates. To construct the in-group versus out-group treatments, we used another question: How much do you approve or disapprove of the movements aimed at the creation of the Luhansk and Donetsk People's Republics?

Respondents who said they approved or strongly approved were coded as pro-separatists. Respondents who said that they disapproved or strongly disapproved were coded as pro-government. Respondents who indicated they were neutral were excluded from the analysis of the experimental results.

APPENDIX TABLE 1. BALANCE TABLE OF THE SURVEY EXPERIMENT IN UKRAINE

	Control (N=386)	Ingroup (N=400)	Outgroup (N=340)	F-Stat (p.value)
Separatist region				4.33 (0.01)
N-Miss	0	0	0	
Mean (SD)	0.50 (0.50)	0.40 (0.49)	0.42 (0.49)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
Age				0.19 (0.82)
N-Miss	0	0	0	
Mean (SD)	36.35 (10.39)	36.36 (10.56)	35.93 (10.85)	
Range	18.00 - 65.00	18.00 - 69.00	18.00 - 65.00	
Female				0.75 (0.47)
N-Miss	0	0	0	
Mean (SD)	0.55 (0.50)	0.51 (0.50)	0.54 (0.50)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
University educated				0.67 (0.51)
N-Miss	0	0	0	
Mean (SD)	0.57 (0.50)	0.61 (0.49)	0.61 (0.49)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
Income (over 4000 hryvnia)				0.97 (0.38)
N-Miss	14	10	11	
Mean (SD)	0.62 (0.49)	0.66 (0.47)	0.64 (0.48)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
Nationalism (feeling more Ukrainian)				2.66 (0.07)
N-Miss	0	0	0	
Mean (SD)	0.38 (0.49)	0.44 (0.50)	0.46 (0.50)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
Employed				1.12 (0.33)
N-Miss	0	0	0	
Mean (SD)	0.49 (0.50)	0.54 (0.50)	0.50 (0.50)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
Russian ethnic				0.38 (0.69)
N-Miss	2	2	0	
Mean (SD)	0.22 (0.41)	0.21 (0.40)	0.23 (0.42)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
Mostly speaks Russian				0.14 (0.87)
N-Miss	0	0	0	
Mean (SD)	0.86 (0.35)	0.86 (0.34)	0.87 (0.33)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	
Ukrainian Orthodox Church (incl. Moscow Patriarchate)				1.5 (0.22)
N-Miss	0	0	0	
Mean (SD)	0.46 (0.50)	0.40 (0.49)	0.45 (0.50)	
Range	0.00 - 1.00	0.00 - 1.00	0.00 - 1.00	

2. *Iraq Surveys: Methodology and Additional Results*

The Iraq case study includes data from two different surveys with different research partners summarized below.

a. *Survey in Mosul, Iraq (2018, N=1,458)*

We collaborated with a respected Iraqi research firm, the Independent Institute for Administration and Civil Society Studies (IIACSS), to conduct the survey in the Iraqi city of Mosul between March and April 2018. IIACSS recruited a team of ten Iraqi enumerators from Mosul to conduct the door-to-door survey with tablets. Revkin conducted the training in Arabic and supervised translation of the questionnaire and eventual data in both directions (English to Arabic and Arabic to English). Given religious and cultural norms around mixed-gender interactions outside of the family among some Iraqis, the team included male and female enumerators in order to accommodate any respondents who requested to be interviewed by someone of the same gender. Although enumerators work individually, if a female or male respondent requested to be interviewed by an enumerator of the same gender, the opposite-gender enumerator called a colleague to conduct the interview.

The random sample was drawn from 47 primary sampling units (PSUs) based on census blocks that were randomly selected from a list of all 209 census blocks in Mosul, indicated in the left panel. Within each PSU, the sampling team randomly selected streets, within which enumerators selected households using a random-walk procedure. Enumerators counted the number of houses on each street and divided by seven to determine the interval of houses skipped between interviews. The tablets were programmed with a Kish grid that randomly selected a respondent from the pool of adult household members.²⁷⁶ Enumerators followed this procedure to complete a total of 30 interviews in each PSU before moving on to the next PSU in the sampling frame.²⁷⁷

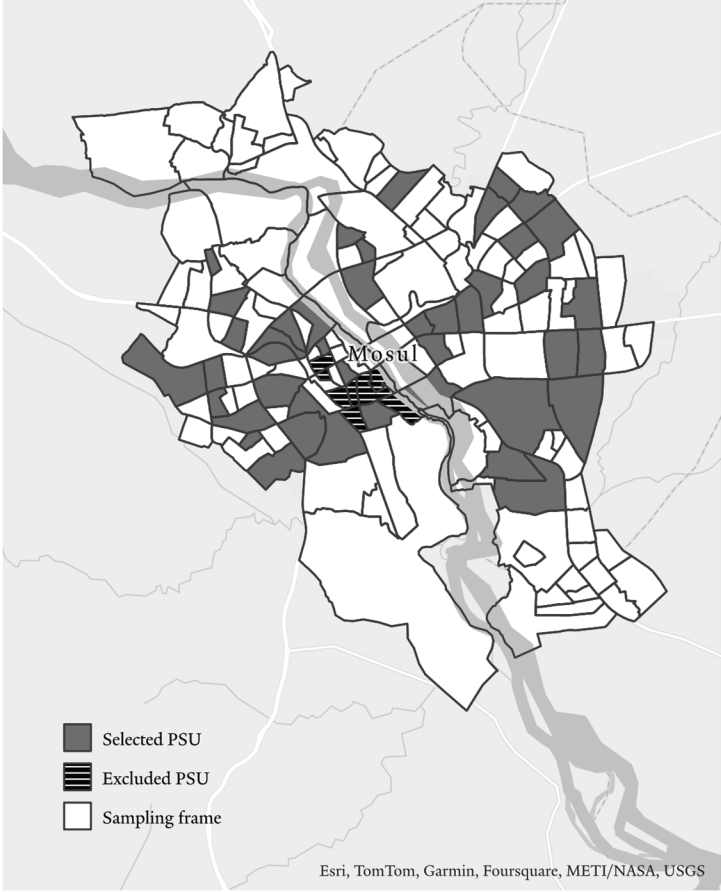
Appendix Figure 1 shows the sampling frame of 209 PSUs in light green and the 47 randomly selected PSUs in dark green. Eight PSUs in West Mosul were excluded from the sampling frame (marked in red) because these areas experienced severe collateral damage during the recent military operation and were largely uninhabited, raising both ethical and practical concerns. Appendix

276. See Leslie Kish, *A Procedure for Objective Respondent Selection Within the Household*, 247 J. AM. STAT. ASS'N 380, 383-84 (1949).

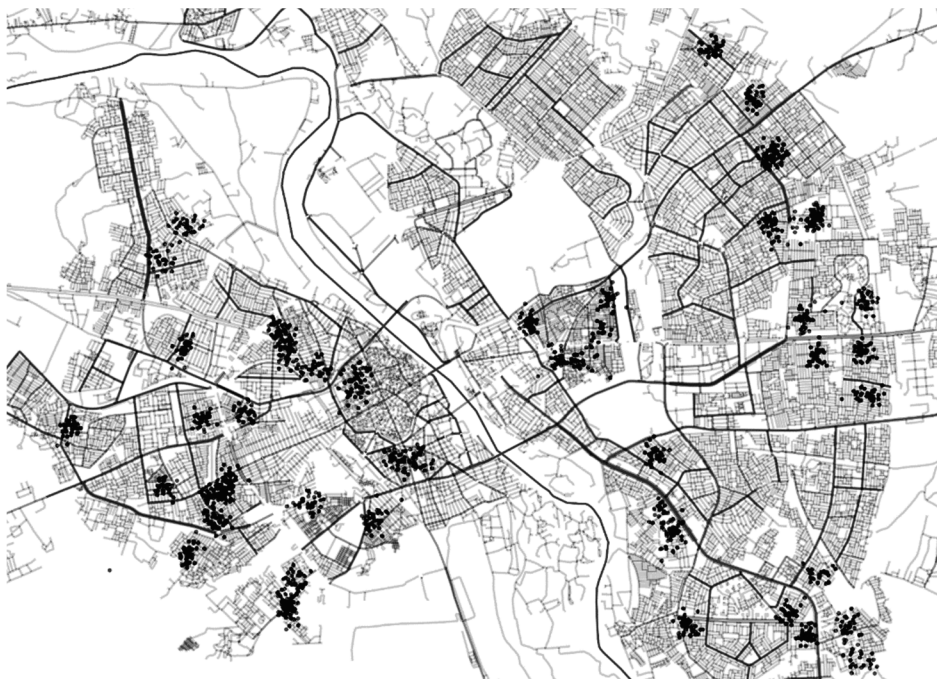
277. It was not feasible to implement truly random sampling using probability proportional to size due to conflict-related changes in demography and population growth since Iraq's last census in 1997 that make accurate estimates of the true populations of the PSUs impossible. For this reason, we assigned a consistent number of interviews (30) to each PSU.

Figure 2 shows the actual locations of surveyed respondents based on geographic coordinates recorded by the tablets. To ensure the anonymity of respondents, we plotted respondents' sampling coordinates after adding random-error terms of up to 100 meters.²⁷⁸

APPENDIX FIGURE 1. SAMPLING FRAME OF SURVEY RESPONDENTS



278. Figures 1 and 2 are reproduced with permission from Benjamin Krick, Jonathan Petkun & Mara Revkin, *Civilian Harm and Military Legitimacy in War* (Duke L. Sch. Pub. L. & Legal Theory Series No. 2023-67, 2023), <https://ssrn.com/abstract=4633249> [<https://perma.cc/HH8R-VYBW>].

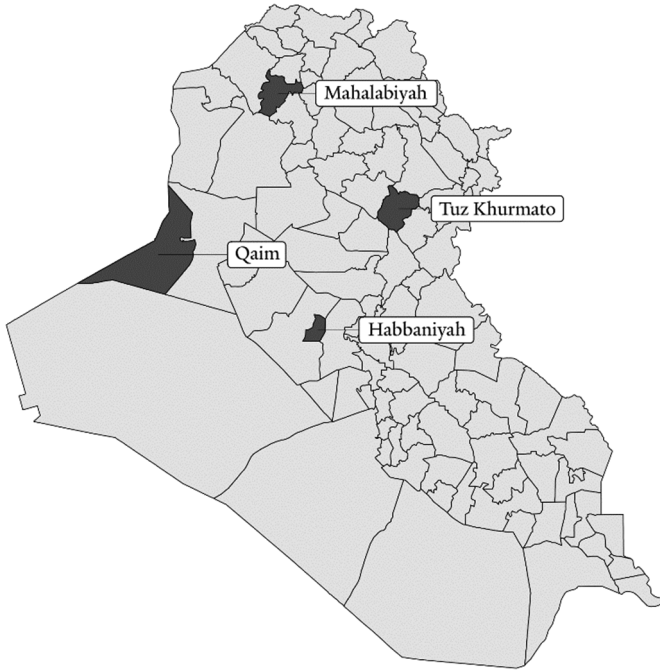
APPENDIX FIGURE 2. ACTUAL LOCATIONS OF SURVEYED RESPONDENTS IN MOSUL*a. Survey with UNDP in Iraq (2022, N=399)*

We collaborated with UNDP in Iraq to conduct a survey of a random sample of 399 respondents across four communities with around 100 respondents per location: Qaim and Habaniyah in the western province of Anbar, Muhalabiya in the northern province of Ninewa, and Tuz Khurmato in the north-central province of Salah al-Din. These locations were selected because they experienced high levels of displacement and destruction during the conflict with ISIL between 2014 and 2017 and therefore have significant needs for international aid to support development and peacebuilding. UNDP supported this research to inform its ongoing Community-Based Reconciliation and Reintegration (C2RI) program, which includes economic assistance for returning IDPs as well as host communities and dialogue mechanisms (Local Peace Committees) that seek to promote social cohesion and peaceful dispute resolution.²⁷⁹ Eight UNDP staff

279. See Mara Redlich Revkin, *Pathways to Reintegration: IRAQ—Families Formerly Associated with ISIL*, U.N. DEV. PROGRAMME (2021), <https://www.undp.org/sites/g/files/zskgke326/files>

conducted the face-to-face survey using tablets between June 8 and July 16, 2022. Enumerators followed a two-part randomization procedure to obtain a representative sample. First, enumerators used a random-walk protocol to select random starting points in each community followed by selection of every third house on the righthand side of the street, turning right at every intersection. Second, enumerators randomly selected a member of each household based on who had the most recent birthday, a simplified version of the Kish grid method described above.²⁸⁰ Appendix Figure 3 indicates the survey locations.²⁸¹

APPENDIX FIGURE 3. MAP OF 2022 UNDP SURVEY LOCATIONS



The 2022 survey was conducted as a follow-up assessment, building on the findings of a similar survey previously conducted by one of the authors with

/migration/iq/UNDP-IQ-Pathways-to-Reintegration-Report.pdf [https://perma.cc/7F32-7RS7].

280. Kish, *supra* note 276, at 383-84.

281. Figure 3 is reproduced with permission from Mara R. Revkin, Benjamin Krick & Raed Ahmed, Understanding Local Variation in Reintegration of Displaced Iraqis with Perceived ISIL Affiliation: Survey and Interview Evidence from Anbar, Ninewa, and Salah al-Din, U.N. INST. FOR DISARMAMENT RSCH. (forthcoming 2024) (on file with authors).

UNDP in the same four locations in 2020, but that survey did not ask the same questions about transitional justice, so we do not include it in our analysis.²⁸² Appendix Tables 2-5 shows disaggregated results at the community level to illustrate differences between the four locations. Percentages add up to more than 100 percent because these multiple-choice questions allowed respondents to select more than one answer choice.

APPENDIX TABLE 2. REINTEGRATION & JUSTICE ATTITUDES (QAIM, ANBAR)

<i>Number of Respondents: N=100</i>		
Who do you think should be responsible for deciding if families perceived as affiliated with ISIL should be allowed to return to this community?	Victims' families	4%
	The Iraqi government	63%
	Iraqi security forces	14%
	Iraqi judicial system	43%
	PMF	1%
	Tribal leaders	14%
	Religious leaders	2%
	U.N. agencies or international NGOs	21%
	Members of your community	1%
Who do you think should be responsible for bringing justice to the victims of ISIL?	Iraqi judicial system	86%
	Tribal justice system	11%
	The U.N. or an international justice mechanism	35%
Which of the following conditions do you believe that people with family ties to ISIL should fulfill before being allowed to return to their communities?	Psychological rehabilitation	74%
	Public apology	17%
	Disavow family in court	39%
	Community service	2%
	Pay compensation	9%
	Short prison sentence (1-5 years)	1%
	Long prison sentence (5+ years)	5%

282. For additional findings from the 2022 survey, see *Perceptions Survey Report*, *supra* note 25. For the results of the previous survey conducted in 2022, see *Reintegration in Iraq: A Perception Survey to Assess Community Readiness for Return and Reintegration of Families with Perceived ISIL Affiliation in Pilot Areas*, U.N. DEV. PROGRAMME IN IRAQ (2021), <https://www.undp.org/iraq/publications/reintegration-iraq-perception-survey-assess-community-readiness-return-and-reintegration-families-perceived-isil-affiliation-pilot> [<https://perma.cc/92D7-MBWB>].

APPENDIX TABLE 3. REINTEGRATION & JUSTICE ATTITUDES (HABANIYAH, ANBAR)

Number of Respondents: N=97

Who do you think should be responsible for deciding if families perceived as affiliated with ISIL should be allowed to return to this community?	Victims’ families	6%
	The Iraqi government	93%
	Iraqi security forces	81%
	Iraqi judicial system	69%
	PMF	2%
	Tribal leaders	76%
	Religious leaders	41%
	U.N. agencies or international NGOs	49%
	Members of your community	35%
Who do you think should be responsible for bringing justice to the victims of ISIL?	Iraqi judicial system	81%
	Tribal justice system	53%
	The U.N. or an international justice mechanism	48%
Which of the following conditions do you believe that people with family ties to ISIL should fulfill before being allowed to return to their communities?	Psychological rehabilitation	98%
	Public apology	97%
	Disavow family in court	91%
	Community service	22%
	Pay compensation	9%
	Short prison sentence (1-5 years)	4%
Long prison sentence (5+ years)	0%	

APPENDIX TABLE 4. REINTEGRATION & JUSTICE ATTITUDES (MUHALABIYA, NINEWA)*Number of Respondents: N=103*

Who do you think should be responsible for deciding if families perceived as affiliated with ISIL should be allowed to return to this community?	Victims' families	12%
	The Iraqi government	93%
	Iraqi security forces	41%
	Iraqi judicial system	30%
	PMF	4%
	Tribal leaders	49%
	Religious leaders	28%
	U.N. agencies or international NGOs	28%
	Members of your community	7%
Who do you think should be responsible for bringing justice to the victims of ISIL?	Iraqi judicial system	94%
	Tribal justice system	12%
	The U.N. or an international justice mechanism	27%
Which of the following conditions do you believe that people with family ties to ISIL should fulfill before being allowed to return to their communities?	Psychological rehabilitation	50%
	Public apology	26%
	Disavow family in court	85%
	Community service	5%
	Pay compensation	2%
	Short prison sentence (1-5 years)	2%
Long prison sentence (5+ years)	2%	

APPENDIX TABLE 5. REINTEGRATION & JUSTICE ATTITUDES (TUZ KHURMATO, SALAH AL-DIN)

Number of Respondents: N=99

Who do you think should be responsible for deciding if families perceived as affiliated with ISIL should be allowed to return to this community?	Victims' families	42%
	The Iraqi government	70%
	Iraqi security forces	65%
	Iraqi judicial system	52%
	PMF	26%
	Tribal leaders	31%
	Religious leaders	18%
	U.N. agencies or international NGOs	33%
	Members of your community	32%
Who do you think should be responsible for bringing justice to the victims of ISIL?	Iraqi judicial system	88%
	Tribal justice system	13%
	The U.N. or an international justice mechanism	30%
Which of the following conditions do you believe that people with family ties to ISIL should fulfill before being allowed to return to their communities?	Psychological rehabilitation	67%
	Public apology	34%
	Disavow family in court	63%
	Community service	7%
	Pay compensation	13%
	Short prison sentence (1-5 years)	4%
	Long prison sentence (5+ years)	4%