

Institution: University of Oxford
Unit of Assessment: 23 - Sociology
Title of case study: Helping democracies to deal with past atrocities
<p>1. Summary of the impact</p> <p>New democracies face the critical challenge of dealing with past abuses of human rights. Professor Leigh Payne's empirical research on transitional justice concludes that while no single mechanism successfully achieves the strengthening of democracy, human rights, and peace, combinations of prosecutions and amnesties (with or without 'truth commissions') increase the likelihood of improved democracy and human rights measures. These findings have not only shaped the debate over transitional justice; they have played a key role in constructing and endorsing the policy decisions made by a range of political actors: victims' groups, NGOs, INGOs, policymakers, politicians, judges, and prosecutors. They have shaped policy debate, laws, practices, demands, and methodological approaches to transitional justice in Brazil and Colombia; and had a direct and specific impact on policies regarding the violent past in Uruguay.</p>
<p>2. Underpinning research</p> <p>Transitional justice is designed to end violent conflict and human rights abuses, strengthen democracy, and reconcile divided societies; as such, it has become one of the most important and innovative aspects of twenty-first century domestic and international policy-making. However, there is complex discussion among scholars, policymakers, and practitioners regarding the relative effectiveness of transitional justice mechanisms. Payne's research tackles the much-debated questions of whether fledgling democracies should take perpetrators of past atrocities to trial to strengthen democracy and rule of law, whether they should grant amnesties to preserve political stability, or whether they should advance stability and restorative justice through truth commissions. In 2005, Payne created with her doctoral students at the University of Wisconsin (Tricia D. Olsen, now Assistant Professor of Business and Legal Ethics, University of Denver's Daniels College of Business, and Andrew G. Reiter, now Assistant Professor of Politics at Mount Holyoke College) the first-ever Transitional Justice Database, covering five mechanisms of transitional justice—criminal trials, truth commissions, amnesties, reparations, and lustration—for all countries in the world from 1970 to 2007 [www.tjdbproject.com]. The project then developed through two further phases after Payne assumed her post at the University of Oxford as Professor of Sociology and Latin America in January 2009.</p> <p><u>Phase I: Transitional Justice in Balance</u></p> <p>Beginning in January 2009, Payne's team analysed the existing Transitional Justice Database, developing broadly comparative, cross-regional, generalizable, and empirically grounded claims about the impact of transitional justice [Section 3: R1], and developing policy implications for Latin American transitional countries [R2, R3, R5 (Spanish/Portuguese)] and countries emerging from civil war [R6]. The multivariate analysis showed that the use of some kind of transitional justice mechanism was more likely, than no action being taken regarding past atrocities, and that this would strengthen democracy and human rights. But Payne's team found that no single mechanism by itself produced these positive results, and that truth commissions, used in isolation, were likely to produce negative results for human rights goals. However, certain combinations of mechanisms increased the likelihood of positive outcomes for democracy and human rights. These combinations of mechanisms included (1) trials and amnesties; and (2) trials, amnesties, and truth commissions. The project's multivariate analysis further revealed the specific set of factors (i.e. the country's GDP per capita, the timing of its transition to democracy, the degree of repression before the transition, and additional regional characteristics) likely to influence the adoption of the transitional justice mechanisms that lead to positive outcomes for democracy and human rights.</p> <p><u>Phase II: Overcoming Impunity</u></p> <p>In October 2009, from a preliminary reconsideration of the team's findings, Payne developed a second larger research project to consider what types of trials, truth commissions, amnesty laws, and country contexts explained the positive and negative outcomes from the previous study. The</p>

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research team was expanded to include a post-doctoral researcher at the University of Oxford, Dr Francesca Lessa and a DPhil researcher, Gabriel Pereira.

The new project updated the transitional justice data, adding entries for 2007-10. This version of the database included 95 transitional countries, and the transitional justice mechanisms included: 481 domestic prosecutions in 59 countries with 57% having guilty verdicts; 70 truth commissions in 35 countries; and 192 amnesties in 55 countries. Payne's team employed new statistical models to analyse these data. A study was undertaken of every amnesty law in the database, examining type (partial or blanket) and relevant domestic and international challenges, to explore when and how they could be successfully combined with trials to produce positive outcomes. The project further investigated each truth commission (i.e. its composition, mandate, recommendations, implementation) and trial (i.e. rank of those tried, level of court, verdict, reversal), for human rights abuses [R4]. Payne's team found that increasingly, countries have adopted more partial amnesty laws that allow for trials, but that some blanket amnesty laws continue to persist and block prosecutions. However, even where amnesty laws persist, governments have found ways to circumvent them, through a combination of civil society mobilization, judicial leadership, and international pressure. Where strong and powerful supporters of amnesty remain in place, even efforts by those three political actors are likely to be blocked [R7]. The researchers further found that amnesty laws are not the only impediment to accountability. In several cases, a *de facto* amnesty prevails blocking all efforts to prosecute past human rights violations.

3. References to the research

Authors, who were at Oxford at the time of the research, are underlined.

[R1] Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, *Transitional Justice in Balance:*

Comparing Processes, Weighing Efficacy, United States Institute of Peace, 2010a; cited 71 times (Google Scholar).

[R2] Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, 'The Justice Balance: When Transitional Justice Improves Human Rights and Democracy', *Human Rights Quarterly*, vol. 32, 2010b, pp. 980-1005; cited 19 times (Google Scholar); journal has impact factor of 1.1 (ISI).

[R3] "Equilibrando Julgamentos e Anistias na América Latina: Perspectivas Comparativa e Teórica," *Revista Anistia Política e Justiça de Transição*, No.2 (2010) [Brazil]), with Tricia D. Olsen and Andrew G. Reiter; "Justicia transicional en equilibrio: comparando procesos, midiendo efectividad" (powerpoint presentation in Spanish)

[R4] Francesca Lessa and Leigh A. Payne (eds), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, Cambridge University Press, 2012.

- Juan E. Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment stated that: 'This impressive volume is a collection of chapters that constitute the state of the art on the matter of peace and justice and their enduring and ever-present dilemmas.'

[R5] Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, "Amnesty in the Age of Accountability: Brazil in Comparative Context" in *Real Social Science: Applied Phronesis*, edited by Bent Flyvbjerg, Todd Landman, and Sanford Schram, Cambridge University Press, 2012.

[R6] Andrew G. Reiter, Tricia D. Olsen, and Leigh A. Payne, "Transitional Justice and Civil War: Exploring New Pathways, Challenging Old Guideposts" *Transitional Justice Review* 1:1 (2012): 137-169.

[R7] Francesca Lessa, Tricia D. Olsen, Leigh A. Payne, Gabriel Pereira, and Andrew Reiter, "Overcoming Impunity: Pathways to Accountability in Latin America" (accepted; expected early 2014), *International Journal of Transitional Justice*.

External Research Grants:

- Leigh Payne, 'The Justice Balance', Zennström Philanthropies, October 2009 - September 2010, £34,957.
- Leigh Payne, 'The Impact of Transitional Justice on Human Rights and Democracy', Arts and Humanities Research Council, June 2010 - August 2012, £213,407 –collaborative grant with the National Science Foundation (US) with Kathryn Sikkink, University of Minnesota.

- Leigh Payne, 'Overcoming Amnesty in the Age of Accountability', Oak Foundation, March 2011 to September 2012, \$104,230 = £65,144.

4. Details of the impact

The two phases of Payne's research discussed above have led to high demand for her involvement in policy making around the world. Most significant among these are presentations to policymakers in Brazil, Colombia, Uruguay, and at global fora.

Brazil: In 2009, Brazil's government was deliberating whether to establish a commission to investigate crimes committed under military rule (then shielded by an Amnesty Law). At this crucial juncture, thanks to the team's established networks and the appropriateness and relevance of the research, Payne was identified as one of only a handful of international experts on transitional justice to present her findings and influence the policy debate at three venues. First, a seminar sponsored by the Brazilian Ministry of Justice and organized by the President of the Amnesty Commission ('When Transitional Justice Works', Rio de Janeiro, September 2009), which was attended by the Minister of Justice along with other Ministry staff. Second, a conference sponsored by the National Association of Human Rights ('Human Rights, Democracy and Diversity', Belém, September 2009), which was attended by policy-makers including the Minister of Human Rights. Third, an International Conference on the Right to Truth, sponsored by the Ministry of Justice and the Núcleo de Estudos da Violência (São Paulo, October 2009). Payne spoke of the findings of her research [R1-R3] indicating that Brazilian democracy and human rights would be enhanced by adding trials to the mix of transitional justice mechanisms currently debated in the country. Although the country has resisted any justice for past human rights violations, Payne's research reinforces the findings by the Inter-American Court of Human Rights that have condemned the blanket amnesty law and reinforce the claims made by victims' groups. Indeed, as the Chairman of the Amnesty Commission recalls, Payne's research reinforced and amplified the domestic and international pressure for trials [Section 5: C1] to complement the amnesty law and truth commission. He notes that the victim groups at the truth commission meeting added "and Justice" to the nametags that had previously read "The Right to Truth." [C1]. They thus used Payne's team's finding that truth, justice, and amnesties in Brazil would likely lead to stronger results for democracy and human rights as a way to promote their demand that the government not limit the process to an amnesty plus truth commission, but also considered the possibility of human rights trials [R1-R3]. Payne et al. have written about this event and its impact [R5].

Colombia: Payne presented her research [R4] at an international seminar in Colombia, on 'Negotiation with the Guerillas: Between Peace and Justice' (Bogota, November 2010). As part of this visit, Payne was also asked by the Ideas of Peace Foundation and the International Centre for Transitional Justice-Colombia to discuss her work in private meetings with all sections of the judicial and political establishment concerned with the peace process: thirty public prosecutors involved with paramilitary cases, twenty clerks of the Supreme Court, three Justices of the Supreme Court, and the Chair of the Congressional Committee on Peace [C2]. According to a member of the National Commission of Reparation and Reconciliation, Payne's 'comparative empirical analyses of the balance between justice, amnesty and other mechanisms of transitional justice have had an enormous impact on introducing a sense of reality into the debates about the justice policies that should be adopted to guarantee the success of the transition' [C3]. Payne was also invited to present her research in a conference aimed at adapting the "Colombian model" for Tunisia, "Rule of Law and Transitional Justice" sponsored by the German government agency GIZ, European Inter-University Centre for Human Rights and Democratisation (EIUC), Venice Lido, 11-15 November 2012.

Uruguay: Payne's team used the findings on amnesties [R4] to successfully influence Uruguay's policymakers. In May 2011, Uruguay's Supreme Court of Justice had determined that enforced disappearance was an ordinary crime rather than an international crime against humanity. The Court's reasoning, when applied generally, made it impossible to prosecute retrospectively any of the crimes committed during the previous dictatorship, because they were immune under the statute of limitations stipulated by the criminal code. In response to this decision, Lessa contacted Amnesty International's legal adviser in Buenos Aires and offered the resources of Oxford's Transitional Justice Database. Using evidence from the research [R4], Amnesty International's

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report (Sept. 2011) argued that international crimes are not subject to statutes of limitations [C4]. The report was launched at a press conference in Montevideo that attracted widespread public attention. This led Amnesty International to meet with the President of the Supreme Court, with the association of prosecutors, and with victims' lawyers, to lobby for change. Bowing to public pressure, the government passed a law in October 2011 that overrode the statute of limitations, and redefined these crimes as crimes against humanity. According to a Member of Parliament in Uruguay, Lessa and the team's research 'had an important impact on discussions on how to come to terms with the past ..., by offering her expertise on the topic and directly contributing to debates' [C5].

Payne's research [R6] also informs international efforts to foster peace. The Royal United Services Institute invited her to discuss her research at a workshop for policy-makers in Whitehall ('Ending Colombia's Internal Conflict', January 2013). She was also included in the International Expert Forum (IEF) on Peacebuilding and Post-Conflict Recovery on 23 May 2013 to discuss her findings [R4]. The IEF is a collaborative initiative of the Folke Bernadotte Academy (FBA), the International Peace Institute (IPI), the SecDev Group, and the Center for International Peace Operations (ZIF), and brought UN and NGO practitioners together with 60-70 scholars to discuss peacebuilding. One of the comments after Payne's talk emphasized how her research [R1-R6] had overcome the simplistic arguments 'between those who advocate the use of war crimes tribunals to punish evil to deter such acts in the future versus those who argue for amnesty in order to persuade all sides to end the war in a negotiated settlement.' This participant went on to say that the value of Payne's research is that it provides 'real data on the consequences...of tribunals, truth commissions, and amnesties rather than anecdotes about particular cases.' [C6] The chief organizer of the IEF added that Payne's presentation offered "policy-makers and practitioners...the "big picture" instead of case specific and selective anecdotes (which they usually come across).'

5. Sources to corroborate the impact

[C1] National Justice Secretary and Chairman of the Amnesty Commission, Brazil: letter of 21 May 2013

[C2] Executive Director, Fundación Ideas para la Paz (Ideas for Peace Foundation), Colombia: letter of 3 June 2013

[C3] Member of Historical Memory Group, National Commission of Reparation and Reconciliation, Colombia: letter of 13 June 2013

[C4] Amnesty International, 2011, *Uruguay: los crímenes de derecho internacional no están sujetos a prescripción* [Uruguay: international crimes are not subject to statutes of limitation]; <http://www.amnesty.org/es/library/info/AMR52/001/2011>; press release, <http://www.amnesty.org/en/for-media/press-releases/uruguay-must-investigate-and-prosecute-crimes-past-2011-09-26>

[C5] Member of Parliament, Uruguay: letter of 20 June 2013

[C6] Dr Roy Licklider, Adjunct Senior Research Scholar, Saltzman Institute for War and Peace Studies, Columbia University at the International Expert Forum; email of 23 September 2013