SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Journal of International Law

Volume 47 | Issue 1

2015

# Transitional Justice and the Rule of Law: Lessons from the Field

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# TRANSITIONAL JUSTICE AND THE RULE OF LAW: LESSONS FROM THE FIELD

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*Thank you very much for that kind introduction. It's a great treat to be back here at the Cox Center and Case Western University Law School, where I've had the pleasure of participating in a number of wonderful conferences on international legal issues over the years.*

*I'm honored to receive the center's Humanitarian Award, but I must admit that my experience and insights into international humanitarian issues have been gained on the backs of others, colleagues at the ICTY, Human Rights Watch, ABA CEELI and now ABA ROLI, who are on the front lines of the development and implementation of international humanitarian norms. I am grateful for the opportunities I've had to be a part of that work and to learn from them. Let me hasten to add, however, that the thoughts I'm going to share with you today are my own, I suspect some of my colleagues, present or former, would disagree vehemently with them. And I trust it goes without saying that I certainly would not pretend to speak on behalf of the nearly 400,000 lawyers of the ABA! Pity the person who endeavors to do so!*

## I. THE RELATIONSHIP BETWEEN TRANSITIONAL JUSTICE AND THE RULE OF LAW, AS CONCEPTS AND AREAS OF PRACTICE.

I'd like to focus my remarks today on the relationship between transitional justice and rule of law, as concepts, and as fields of scholarship and practice; to propose a re-conceptualization of transitional justice in rule of law terms; and draw some lessons for the rule of law field about what such a reconceptualization means for how we do transitional justice.

Over the past two decades, these two fields--transitional justice and rule of law development--have advanced significantly in both theory and practice. Transitional justice has seen the development of numerous models and approaches and come to encompass everything from traditional criminal procedures in the form of international courts and tribunals and hybrid and special courts to expansive

1. Associate Executive Director, American Bar Association; Director, American Bar Association Rule of Law Initiative. The views expressed in this essay are the author's in her private capacity and do not represent those of the American Bar Association.

programs of lustration, reparation, truth and reconciliation, and commemoration.[2]

Over the same period, the modern era of rule of law development, launched in the aftermath of the fall of the Berlin Wall, has similarly yielded a wide array of tools and an increasingly sophisticated appreciation of the levers of change in this complex arena, and its importance to achieving other development and international policy goals. There's some healthy academic debate about the definition of the rule of law,[3] but for my purposes today and for reasons that will become apparent, I would like to embrace an expansive version, encompassing both the laws, institutions, and procedures that ensure transparent, effective and accountable governance and the substantive human rights norms that ensure that that governance is accessible, fair and equitable. Rule of law development programs include ambitious legislative and institutional reform and capacity building efforts, court administration and automation initiatives, and judicial and prosecutorial training, all aimed at expanding the "supply" side of justice, as well as civil society support, human rights litigation and advocacy, public education, know-your-rights media campaigns, and the like, aimed at building "demand" for justice.[4]

Billions of dollars are spent on transitional justice and rule of law each year, with significant potential synergies between these fields. In the early 1990s, when transitional justice meant a court in The Hague and rule of law development assistance referred to a training program in the host country, there seemed little relationship between the two, other than perhaps a competition for scarce foreign assistance resources.[5] Today, however, transitional justice focuses on building national prosecutorial and judicial capacity—indeed, the field prioritizes these solutions under the International Criminal Court's complementarity regime--putting it squarely in the rule of law development business. And as both the rule of law and transitional justice fields embrace rights-based approaches, seek to empower victims, and devise "bottom-up" solutions, these efforts are—or should be—closely intertwined.

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2. *See generally Transitional Justice*, U.N. RULE OF LAW, http://www.unrol.org/article.aspx?article_id=29 (last visited Apr. 20, 2015) (describing the various forms of transitional justice sanctioned by the United Nations).

3. *See* William Schabas, Int'l Law Prof., Middlesex Univ., Paper Presented at the Annual Meeting of the Japanese Society of International Law: Transitional Justice and the Norms of International Law 3 (Oct. 8, 2011).

4. *See* U.N. Sec. Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of the Secretary-General*, ¶ 9–16, U.N. Doc. S/2011/634 (Oct. 12, 2011), *available at* http://www.unrol.org/files/S_2011_634EN.pdf.

5. *See id.* at 29–32.

But for the most part, these are considered two distinct fields, in both theory and practice. The reasons for this disconnect are multifold, including the fact that the two fields stem from traditionally distinct fields of scholarship and practice—transitional justice being the realm of lawyers, especially international human rights lawyers; and rule of law development being the province of a mix of development experts, political scientists, and comparative law experts. And in more practical terms on the ground, there are often real or perceived conflicts over prioritization, sequencing, and resources for transitional justice and rule of law initiatives.

In an aside in a 2013 article, leading scholars of transitional justice, Kathryn Sikkink and Hun Joon Kim, summarized the prevailing view as follows:

> "Although better quality rule of law is neither a necessary nor a sufficient condition for transitional justice, developments in the rule of law have contributed to transitional justice, and the success of some transitional justice measures may in turn enhance the rule of law."[6]

So, to paraphrase, there's a loose but not essential association between the two. We pursue justice, and we pursue rule of law, and sometimes, maybe coincidentally, if we're really good or lucky, they reinforce one another.

Really?! If that's the case, and I fear that, more often than not, it is, then there's something seriously wrong with the way we're thinking and doing both transitional justice and rule of law. What, after all, are we transitioning to, with these justice efforts, if not rule of law? Shouldn't we be doing that consciously and intentionally?

I'm with UN Secretary-General Ban Ki-Moon, who concluded in his 2011 Report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," that "[t]hough linkages between transitional justice processes and institutional capacity-building have been strengthened...greater commitments to integrate our approaches are required going forward."[7]

6. 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, 271 (2013).

7. *See* U.N. Sec. Council, *supra* note 3, at ¶ 20.

## II. THE PURPOSE OF TRANSITIONAL JUSTICE: RE-ESTABLISHING THE RULE OF LAW

Indeed, the idea that I'd like to advance here today is that we should conceive of transitional justice as a rule of law project, that is, we should design, sequence, and pursue transitional justice to advance the rule of law. Rather than justice as the principal goal, in this conception, it is a means to an end, the rule of law. Or, to put it another way, I would suggest an expansive understanding of transitional justice in which the re-establishment of rule of law *is* justice.

I appreciate that—coming from the director of the Rule of Law Initiative—this may sound self-serving, like a case of *where you sit is where you stand*. But, I think that re-conceptualizing transitional justice in terms of its rule of law impacts makes moral and ethical sense and brings welcome clarity of purpose to the transitional justice field. Let me explain why.

One of the challenges encountered in any transitional justice effort is identifying and clarifying its goals and designing processes and projects that can fulfil those goals. In the politically charged and complex environments in which transitional justice unfolds, there are often many varied goals articulated by different stakeholders in the process, with no clear prioritization among them. The goal of transitional justice can be varyingly or simultaneously identified as peace, reconciliation and social cohesion, retribution, punishment, restitution, reparation, truth-telling, vindication, validation, deterrence, prevention, reform, and development.[8] What the goal is may affect the transitional justice mechanism; what you do to achieve retribution may be very different from what you do to achieve reparation or reconciliation, not to mention the elusive truth. In some cases, different transitional justice tools can be deployed simultaneously to achieve these varied goals, but in others, they may be in conflict, or limited resources may simply require prioritization of strategies to achieve one goal over another.[9]

How should the transitional justice field make these choices? I would like to suggest that reframing the principal goal of transitional justice as establishing (or re-establishing) the rule of law can help sort through, prioritize, and reconcile these sometimes competing demands.

This approach takes as its starting point the idea that prevention is prioritized among all the possible goals for transitional justice,

8. *See, e.g.*, Schabas, *supra* note 2, at 4–5.

9. *Id.*

positing that the principal goal for transitional justice interventions should be non-recurrence, to guarantee *never again*. And this approach also assumes that the most effective prevention strategy is a well-developed rule of law, defined broadly to encompass not just effective and efficient justice sector institutions, but also guarantees of basic human rights such as due process, fairness, and equality, and indicia of good governance such as transparency and accountability of governmental institutions.

Why do I think this is appropriate? Well, actually, most of the other purposes of transitional justice have at their root, prevention or non-recurrence. Some have important ancillary or independent benefits, for example for victims.[10] But without wanting to dishonor victims, I think the morally defensible choice as between a measure that serves victims and one that prevents future victimization is the latter. And we know that rule of law states are more effective at preventing atrocities, by providing a check on abusive state power and offering legal and peaceful means of addressing the kinds of grievances and conflicts that give rise to atrocities.

Reframing the purpose of transitional justice as re-establishing the rule of law provides a framework for choosing among transitional justice approaches and processes that is both principled and flexible, accommodating context-specific transitional justice solutions that contemporary research shows are most effective. In one context, re-establishing the rule of law might require vetting and lustration of security forces responsible for past abuses and prone to future violations. In another, truth-telling or reparations processes that help re-establish a broad-based rule of law culture may be in order. Prosecutions are justified on the contribution they make to the rule of law over the long term, rather than short-term or particularized interests, such as retribution. The role of victims too is defined with an eye to the requirements of re-establishing the rule of law. For example, this approach might favor processes and mechanisms that reach victimized populations broadly--re-establishing widespread confidence in and appreciation for the rule of law--over robust individual victim participation in individual criminal prosecutions that, while important to particular victims, may have limited rule of law impacts.

Such an approach would begin with an assessment of the rule of law context, the gaps in the rule of law that permitted atrocities to take place, and the critical elements of rule of law required to prevent them in the future. These assessments could take advantage of best practices in rule of law development assistance, including

10. This mechanism is usually through a commission of inquiry or a truth and reconciliation commission. *See* U.N. Sec. Council, *supra* note 3, at ¶ 23.

participatory research in affected communities, local ownership of program design, sustainability guarantees, and plans for monitoring and evaluating the intervention. In each case, design of the transitional justice response would be part of and consistent with a comprehensive assessment of the elements required to re-establish the rule of law.

Which transitional justice tools are used and how they are sequenced, designed, and deployed would hinge on their contribution to building the rule of law in the particular transitional society. A rule-of-law-based approach puts the emphasis on *transition* rather than *justice*, or rather, privileges justice that has transitional impact on the longer-term rule of law over *justice*—in the traditional judicial process sense of the word—simply for justice's sake.

Such an orientation brings much needed clarity of purpose to transitional justice initiatives. And it promises the efficient and effective use of scarce resources for justice interventions, training these resources on interventions most likely to have a significant long-term impact, and intentionally taking advantage of important synergies between transitional justice mechanisms and the development of rule of law.

## III. Implications of a Rule of Law Approach to Transitional Justice.

Let me elaborate the implications of a rule of law approach to transitional justice, with some particular examples from the field. What does a rule of law approach to transitional justice mean in practice? What do we know about effective rule of law development and in particular the effects of different kinds of transitional justice on rule of law that this reorientation would bring to bear? What lessons are there from the rule of law field that can inform a rule of law approach to transitional justice?

As you begin to think about transitional justice in rule of law terms, your focus changes, different elements of a transitional justice strategy become more important, including some that might be considered optional when designing transitional justice processes with a purely justice frame but become critically important if the central goal is re-establishing the rule of law in a transitional society. Let me highlight a few of these.

### *A. Modeling the Rule of Law in Transitional Justice Processes*

It would seem obvious and uncontroversial to insist that transitional justice initiatives adhere to fundamental principles of legality, procedural fairness, and even-handed and non-discriminatory application of the law, in short, that they model the rule of law for transitional societies. Certainly if the principal goal of the process is to re-establish the rule of law, this becomes essential. Yet, time and again, throughout the past twenty years of transitional justice

experimentation, policy-makers, prosecutors, and judges focused narrowly on a justice imperative have cut corners in ways that have seriously eroded the rule of law in post-conflict settings. Rule of law lapses—such as the prolonged detention of alleged perpetrators without charge in Cambodia,[11] the one-sided "victors' justice" in Rwanda,[12] or impunity enjoyed by Indonesian military leaders for crimes committed in Timor-Leste[13]—can be rationalized as unfortunate but necessary compromises in service of a higher goal of justice, at least in the short term. The counter-factual is of course difficult to prove, and only time will tell, but such short-cuts certainly undermine the legitimacy and impact of transitional justice, and may have long term deleterious rule of law and human rights implications.

A rule of law approach to transitional justice eschews such short-cuts and requires even-handed accountability and careful respect for certain fundamental procedural rights, even, or maybe especially, outside of formal legal proceedings, in truth-seeking or other consultative processes. Special care should be taken to ensure the process is accessible to marginalized populations. Efforts to engage local affected communities in transitional justice process design are salutary, but should be carefully pursued to avoid reinforcing traditional power structures or discrimination against or exclusion of disadvantaged groups.

Work that the ABA ROLI has done recently in Guinea[14] and Mali[15] to facilitate local input into transitional justice processes has underscored the importance and difficulty of ensuring such participation and inclusion. Special effort is necessary to ensure the participation of women and other traditionally marginalized populations, insisting on their representation, or taking the process to them, to places where it is accessible, where their participation is acceptable.

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11. *See, e.g.*, U.S. STATE DEP'T, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: CAMBODIA 1, 6 (2013), *available at* http://www.state.gov/documents/organization/220395.pdf.

12. *See, e.g.*, *Rwanda: Tribunal Risks Supporting "Victor's Justice,"* HUM. RTS. WATCH (Jun. 1, 2009), http://www.hrw.org/ news/2009/06/01/rwanda-tribunal-risks-supporting-victor-s-justice.

13. *See, e.g.*, INT'L CTR. FOR TRANSITIONAL JUST., IMPUNITY IN TIMOR-LESTE: CAN THE SERIOUS CRIMES INVESTIGATION TEAM MAKE A DIFFERENCE? 4 (Jun. 2010), *available at* https://www.ictj.org/ sites/default/files/ICTJ-TimorLeste-Investigation-Team-2010-English.pdf.

14. *See Guinea*, AM. BAR. ASS'N RULE OF LAW INITIATIVE, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/guinea.html (last visited Apr. 20, 2015).

15. *See Mali*, AM. BAR ASS'N RULE OF LAW INITIATIVE, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/mali.html (last visited Apr. 20, 2015).

What we begin to see and appreciate when we take a rule of law approach to transitional justice is that the process itself may be as important as the outcome. Traditional judicial transitional justice approaches focus—perhaps excessively—on the outcome, the verdict, the sentence; with clear winners and losers; the rule of law on one side, and violence, oppression, atrocity on the other.[16] Widening our focus, to encompass the process, and to make the most of it, can help ensure that rule of law is always the winner, whatever the verdict or outcome. To ensure that the rule of law is always the winner is to demand rule of law in the transitional justice process, to make that process transformative of existing practice, norms, and power structures. Thus, for example, in Mali, where ABA ROLI is working with local partners to use the religious justice mechanism known as recourse to the Cadi (or Islamic judge)—a widely recognized local practice—it is critically important to introduce new attributes guaranteeing equity, fairness, predictability to that process, lest it reinforce problems or lay groundwork for revenge and new atrocities.

The transitional justice process is a critical opportunity to re-set the public's expectations of and confidence in the rule of law. Failure to seize this opportunity, and worse, reinforcing skepticism about the rule of law or sowing seeds of grievance and injustice through an imbalanced or procedurally flawed transitional justice process, can set the transition back by years. To summarize, the first critical lesson for a rule of law approach to transitional justice is the importance of modelling rule of law in transitional justice processes.

### *B. Localizing Justice*

A second important aspect of rule-of-law-based approaches to transitional justice is their engagement with, relevance for, and long-term contribution to the affected community. This was a lesson learned early in the history of the *ad hoc* tribunals for Yugoslavia and Rwanda, where trials conducted in English or French in the Hague had little resonance or positive impact on the affected populations (indeed, they were susceptible to distortion that risked radicalizing elements of the population), and they did nothing to develop the capacity of local justice sector institutions.[17] Belatedly, the ad hoc tribunals developed public awareness and media campaigns to explain the procedures and counter misinformation about them, and subsequently established tribunals have been more intentional about outreach. But I am just back Sunday from Belgrade, and I am sorry

16. *See* Schabas, *supra* note 2, at 7–8.

17. *See* U.N. Sec. Council, *supra* note 3, at ¶ 29 (describing the repatriation of prosecutions from the *ad hoc* tribunals to the target countries, and acknowledging the need to enhance the reputation of the *ad hoc* and patriated prosecutions in the future).

to report that the Hague Tribunal still has little resonance or credibility with the local population. This is not to say it was a mistake, but that a rule of law approach to accountability might have taken us down a different and more impactful path. More successful in rule of law terms has been the special war crimes chamber in Belgrade, with verdicts that have more resonance and impact locally. And it serves as an important incubator of rule of law reform, for example in the introduction of a new adversarial criminal procedure code, now being rolled out in all criminal proceedings.

More recent years have seen a proliferation of such hybrid and special court models located in or near situation countries and tapping national as well as international figures as prosecutors and judges. These processes not only promise to be better understood by affected populations, they also develop critical justice sector infrastructure and human capital that is essential for re-establishing the rule of law over the long term.[18]

An appreciation for the benefits of local understanding and ownership of accountability efforts also informed the design of the International Criminal Court, its complementarity regime, and the primacy that it gives to national proceedings over international justice.[19] Ironically, however, the Yugoslavia and Rwanda tribunals, through their practice of transferring cases back to national jurisdictions once certain conditions are met, have in the end done more to spur rule of law development in the affected countries than has the International Criminal Court in the situations under its jurisdiction. Prioritizing rule of law in transitional justice efforts might suggest a different approach to the ICC's complementarity jurisprudence, one that is more deferential to national prosecutorial discretion, where that discretion is exercised in a manner consistent with the rule of law. A rule-of-law-based approach also dictates the development of mechanisms for transfer of cases to capable national courts, as in the Rule 11*bis* practice of the *ad hoc* tribunals,[20] and, of course, investment in national capacity, or "positive complementarity," such as the work that ABA ROLI and other

18. *See, e.g.*, *Introduction to the ECCC*, EXTRAORDINARY CHAMBERS IN CTS. CAMBODIA, http://www.eccc.gov.kh/en/about-eccc/introduction (last visited Apr. 20, 2015) (describing the hybrid nature of the ECCC, which follow a mixture of Cambodian and international procedures).

19. Rome Statute of the International Criminal Court art. 17, July 17, 1998, 2187 U.N.T.S. 3.

20. Rules of Procedure and Evidence of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 rule 11*bis*, Jul. 24, 2009, U.N. Doc. IT/32/Rev. 43, *available at* http://www.icty.org/ x/file/ Legal% 20Library/Rules_procedure_evidence/IT032_Rev43_en.pdf.

international development groups are undertaking in the Democratic Republic of Congo, to support the country's mobile court system in trying gross violations in national and military courts.[21] And a rule of law approach would also commend strategies such as that used by the ICC in the Ntanganda case, where the court is conducting the hearing on confirmation of the charges in Bunia, the district in which the atrocities are alleged to have been perpetrated in 2003.

Conceiving of transitional justice principally as a rule of law development project also invites adaptation of valuable consultative and participatory approaches to engaging local populations in transitional justice process design. Local consultation and ownership have long been recognized as essential to the effectiveness and sustainability of rule of law development efforts. More recently, these methodologies have been deployed in transitional justice process design and are the subject of a new USAID practice guide on "Community Participation in Transitional Justice" developed by the ABA Rule of Law Initiative on the basis of its field work in this arena.[22] Such methodologies take as the starting point for transitional justice project design a deep understanding of the local social, economic, and political context and broad consultation among justice stakeholders about their needs, interests, and expectations of transitional justice. These consultative processes can yield solutions that are locally meaningful, address real contemporary needs, and would not be apparent to outsiders. Thus, for example, in the case featured in the USAID guide, we worked with a community that because of thirty years of violence and oppression had been physically and economically isolated. The community wanted the crimes they had suffered recognized and vindicated, but they also wanted a solution that would help address their contemporary needs. Consultation with the affected population identified as a transitional justice solution the building of a road connecting the remote area to the city and dedicating the road to the memory of victims of the prior repression.

Such participatory or consultative processes can not only produce valuable transitional justice strategies but also lay an important foundation for the long-term rule of law, by empowering local populations and equipping them to play an on-going important rule of law role in advocating local interests and holding powerful actors

21. *See Rule of Law Programs in the Democratic Republic of the Congo*, AM. BAR. ASS'N RULE OF LAW INITIATIVE, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/democratic_republic_congo/programs.html#judicial_reform (last visited Apr. 20, 2015).

22. U.S. AGENCY FOR INT'L DEV., COMMUNITY PARTICIPATION IN TRANSITIONAL JUSTICE: A ROLE FOR PARTICIPATORY RESEARCH (2014), *available at* http://www.usaid.gov/ sites/default/files/ documents/1866/CPTJUSAID.pdf.

accountable. This is also the strategy we are pursuing in Mali, where ABA ROLI has facilitated publication of a transitional justice strategy, drawn from community dialogue. The strategy itself is an important outcome, but so too is the experience of participation, empowerment, and peaceful expression of grievances and expectations.

One important condition for participatory approaches' success and contribution to the long-term rule of law is a fit between the local participatory process and the expectations it creates on the one hand, and the outcomes that are politically or practically possible on the other. A mismatch that leaves local needs and expectations unsatisfied can reinforce feelings of injustice and undermine the rule of law. Thus, a critical element of such participatory or bottom-up transitional justice strategies is that they be integrated into state-driven transitional justice initiatives and that there is political will for their implementation.

To summarize, a critical dimension of a rule of law approach to transitional justice is that the transitional justice process is localized, physically situated as close to the site where the crimes took place as is possible, ideally implemented through national and local institutions, and with input to the design and remedy from the affected population.

### *C. Pursuing a Multi-faceted, Iterative and Long-term Strategy*

A third effect of taking a rule of law approach to transitional justice is that it expands both our tool box and our time horizon.

In the transitional justice field, we tend to talk about measures or mechanisms, discrete time-bound projects that provide an accounting and bring closure. In the rule of law development field, we speak of programs and strategies that by definition are never done, that are iterative, responsive to unfolding developments, needs, opportunities. Rule of law development efforts employ a wide range of tactics, from legal reform to training, litigation and legal services to public education campaigns. Each of these can have, at least implicitly, a transitional justice component—providing an accounting, righting a wrong, setting the record straight, or providing a remedy, often systemic rather than individual, but—I would argue—justice nonetheless.

I was recently in Charleston, South Carolina, and I was struck by the tangible steps at transitional justice I could see the local authorities taking, the plaques honoring the work that Thurgood Marshall and Martin Luther King did to end segregation, tributes to the federal judge who issued a landmark desegregation decision in the local courthouse, a clear effort on the part of local authorities to account for past wrongs and take pride in, take ownership of, a new rule of law future. You may have read of the Equal Justice Initiative's efforts to account for widespread lynchings in the south between the Civil War and World War II. In a recent report, they have

documented 4000 such murders, used to enforce Jim Crow laws and segregation, often carried out in public and attracting hundreds and even thousands of spectators, and they are now advocating that the sites of these lynchings be publicly marked with memorials.[23] This is important transitional justice work with equally important rule of law impact. I think the national conversation we've been having about discriminatory and excessive use of force by police and the Justice Department's recent report on policing in Ferguson, MO is also a part of this transitional justice story, as is my own organization, the ABA's, work on over-incarceration in our country and the school to prison pipeline that disproportionately affects minority populations. All of this can be understood as transitional justice, providing an important step toward a more robust and inclusive rule of law.

Taking a traditional judicial process approach to transitional justice, one would not be very satisfied with accountability for slavery, segregation, and all of the related violence that has occurred in the United States over the past 300 years. A rule of law frame provides a different take on this failed transitional justice effort, an appreciation that this is a long process, and that we still have many mechanisms at our disposal to provide an accounting, to reconcile that past with a rule of law future. I want to be very clear here, I'm not urging complacency or patience, actually the opposite; I am urging a conceptual move that I think can turn grievance and guilt and defeat into a strategy for accountability, reckoning and reform that cannot undo the wrongs of the past—indeed, no transitional justice process can do that—but can avoid further victimization and make a difference in the future.

## IV. Conclusion: Rule of Law as A Holistic Approach to Transitional Justice, Finding What Works

Twenty years of experience in the modern era of transitional justice has underscored the importance of holistic solutions that combine community-based processes of truth-telling and reconciliation with formal accountability and reparations regimes. Such calls often refer to the importance of taking account of the rule of law context in question to develop effective transitional justice solutions. In my talk today, I'm suggested flipping this approach, putting rule of law development as the principal goal of transitional justice, and developing a holistic transitional justice strategy that serves this goal.

I've suggested a few ways in which I think this re-orientation would change the way we think about and do transitional justice. But these are based primarily on anecdotal field experience. This emphasis

23. *Lynching in America: Confronting the Legacy of Racial Terror*, EQUAL JUST. INITIATIVE (2014), http://www.eji.org/lynchinginamerica.

on the rule of law effects of transitional justice calls for a lot of new research on what actually works, what actually works better, why, when, how? There is a growing goldmine of data about transitional justice mechanisms used over the past twenty years and their impacts. Early research suggests some interesting findings, such as the fact that prosecutions work in improving human rights, even when they end in acquittals or occur only in neighboring countries, but--here's an interesting finding--they seem to be particularly effective when paired with an amnesty.[24] There are a number of theories about why this may be the case, but we need to investigate those and identify the implications this has for transitional justice design. Other scholars suggest that while prosecutions are effective, litigation before regional human rights bodies--judgments against states rather than individuals and forcing systemic change--is even more impactful. I was struck when I was recently in Central America, discussing a number of reforms with justice sector colleagues there, how many times decisions of the Inter-American Court of Human Rights came up, that they were seriously pre-occupied with how to implement or comply with these decisions. Clearly, that transitional justice mechanism is having important rule of law impact. We still know very little about the relative benefits of these different mechanisms, and virtually nothing about sequencing them to get to rule of law.

So let me leave you with those challenges, to study this incredibly fascinating and important field, and help those of us working to advance the rule of law to do it better.

24. Sikkink & Kim, *supra* note 5, at 282.