



Measuring Transitional Justice in Latin America

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Abstract

This paper introduces a new dataset that measures the effectiveness of domestic efforts to pursue prosecutorial transitional justice strategies. I develop an outcome-based measurement of successful conviction for transitional countries in Latin America in the period between 1979 and 2004, based on the number of convictions and the level of official convicted. An examination of the correlation between effective prosecution and human rights improvement suggests that aggressive prosecution is not essential for transitional countries to realize improvements in protection of human rights. This research design builds on the efforts of Kathryn Sikkink and Carrie Booth Walling to develop proxies for measuring the extent and impact of judicial trials. However, this paper argues that Sikkink and Walling's measurement, based on the duration of attempts to prosecute, is not a meaningful proxy for trial effectiveness and is beset by methodological flaws.

About the Author

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INTRODUCTION

The “third wave” of global democratization, identified by Samuel Huntington as beginning with Portugal’s transition to democracy in 1974, and the surge in civil conflicts early in the 1990s have rekindled a sustained debate over how transitional countries should deal with the human rights abuses committed in their recent past.¹

Countries have adopted a diverse range of policies including amnesties of varying scopes, civil and criminal prosecutions (local, international and hybrid), lustration, reparations, and truth commissions (government sanctioned and non-governmental). The discussion in the academic and advocacy community, however, has centered on the choice between accountability trials and amnesties. Advocates of trials argue that progress toward universal standards of justice deters future human rights abuse and helps create the framework for stable democratization. On the other side, critics argue that justice can only follow the creation of a stable political order and warn of the dangers of aggravating spoiler groups. They contend that non-punitive strategies are usually most conducive to stability.

Recent scholarship by Kathryn Sikkink and Carrie Booth Walling has challenged the contours of this debate. Sikkink and Walling review the past two and a half decades and conclude that the empirical record does not support the literature’s portrayal of trials and amnesties as a dichotomous choice.² The authors find that in Latin America, the site of the largest number of third wave transitions, every country that has passed an amnesty law has also had some level of judicial activity. They also argue that pessimistic assessments of the risks of judicial activity have a weak empirical foundation. Sikkink and Walling pioneer the evolution toward more nuanced measurements of transitional justice strategies in their attempt to code the number of years in which relevant judicial activity occurs in every transitional country. They first use this “country trial year” (CTY) measurement to demonstrate the scope of transitional justice. The authors next use this measurement to examine the correlation between CTYs and civil conflict, human rights improvements and level of democracy. Sikkink and Walling are explicit that their statistical methods are not sophisticated enough to support the claim that trials improve human rights, but they conclude that the empirical record does not support the pessimistic view that trials risk democratic backsliding, civil conflict or increased human rights abuses.³

This paper attempts to refine this empirical approach by developing an alternative measurement based on success at convicting human rights violators. This method allows a graduated scale of comparison between those countries with the highest levels of convictions and those with no convictions that can be employed to test some of the claims made by accountability advocates. I argue that successful prosecutions are a

¹ Samuel Huntington, *The third wave: democratization in the late twentieth century* (Norman: University of Oklahoma Press, 1991).

² Kathryn Sikkink and Carrie Booth Walling, “The Justice Cascade and the Impact of Human Rights Trials in Latin America,” *Journal of Peace Research* 44.4 (July 2007): 427-445.

³ Sikkink and Walling, 433 & 442.

more relevant variable than the duration of judicial activity for measuring the theorized effects of accountability trials. Using this dataset, I find that the Latin American countries with the highest conviction ratings do all show measurable decreases in human rights abuses, though there is insufficient evidence to prove trials are the cause of this improvement. However, countries with a mid-level conviction rating do not have consistent human rights improvements and show no advantages relative to those countries that have no successful convictions. I conclude that, while Sikkink and Walling could be right about the limited risks associated with aggressive transitional justice strategies, there is also little reason to believe that criminal prosecutions have significant salubrious effects on levels of human rights abuses.

OVERVIEW OF THE TRANSITIONAL JUSTICE DEBATE

Vinjamuri and Snyder divide scholars of transitional justice into two camps. Legalists are linked by their “shared belief in the importance of promoting universal standards of justice.”⁴ Pragmatists are more concerned with the behavior of self-interested political actors. Pragmatists tend to be pessimists when it comes to prosecution, because they are suspicious of the ability of trials to alter norms and worried about the risks of provoking the military or other spoiler groups.

One of the weaknesses of the truth-telling literature, noted by Mendeloff, is that there is a tendency to conflate the distinct objectives of transitional justice strategies.⁵ Promotion of social healing, protection of human rights, consolidation of democracy, and prevention of resumption of war or authoritarianism are all potential objectives that frame the desirability of various transitional justice strategies. Though these are interrelated, they are not synonymous. For instance, prosecution could conceivably decrease human rights abuses in peacetime but also increase the chances of a resumption of conflict. This paper focuses primarily on the literature concerning the effects of trials on human rights protection.

THE CASE FOR TRIALS

The legalist arguments that back trials as a means to secure human rights protections fall into three categories.⁶ First, trials have punitive consequences that constrain or deter future human rights violations. Incarceration prevents individuals from committing more abuses. More importantly, trials can deter potential human rights violators through demonstration of credible consequences. Prosecution

⁴ Leslie Vinjamuri and Jack Snyder, “Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice,” *Annual Review of Political Science* 7 (May 2004): 346. Vinjamuri and Snyder also identify a third group, the “emotional psychology approach” which focuses on the conditions necessary for individual and social healing and often (though not exclusively) includes advocates of truth commissions (357).

⁵ David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?,” *International Studies Review* 6.3 (September 2004): 355-380.

⁶ Mendeloff, 358. I borrow from Mendeloff’s typology in identifying these arguments. He identifies eight potential effects truth-telling may have on preventing conflict. Four of these seem relevant to preventing human rights abuses (I group deterrence and preemption together).

symbolizes that society is able to impose penalties on rights abusers and can change the calculation of self-interest even for actors that care little for societal norms.⁷ Advocates speak of breaking the cycle of impunity by showing that there are credible punishments. Both the threat of incarceration and the symbolic blow to legitimacy can serve as effective inducements to change behavior.⁸ Trials can ostensibly discredit the “nationalistic propaganda” or “culture of domination” that authoritarian leaders used to secure public support or compliance.⁹ This argument is applied to institutions (such as the military) as well as individual actors. Acuña and Smulovitz, in their case study of Argentina, argue that prosecution can change the cost-benefit calculations of the military so that the advantages of playing by the rules come to be seen as larger than the possible repercussions of defection.¹⁰

Second, trials can strengthen institutions, like the judiciary, that provide an important check on other government actors. Juan Méndez argues that retroactive trials are a crucial means for courts to attain credibility in transitioning countries:

[C]ourts typically affirm their independence and credibility in society—and thereby contribute enormously to the consolidation of democracy and the rule of law—precisely by taking on hard cases and living up to the expectations of fairness that society places on them.¹¹

A capable judiciary is seen as the key element in establishing the rule of law. This generates confidence in the ability of democratic processes to manage conflict, strengthens the normative power of the law and creates a counter balance to an excessively powerful executive.¹²

A closely related argument is the claim that trials help to consolidate democracy, which is important for sustainable protection of human rights. At the most general level, proponents contend that trials signal a break with the authoritarian past that is crucial to build legitimacy and public support for the democratization process and the new government. Trials can help forge public consensus on national history and cultivate public investment in democratization. Through demonstration of the state’s

⁷ Sikkink and Walling, 28.

⁸ Payam Akhavan, “Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?” *American Journal of International Law* 95.1 (January 2001): 12.

⁹ Raquel Aldana, “A Victim-Centered Reflection on Truth Commissions and Prosecutions as a Response to Mass Atrocities,” *Journal of Human Rights* 5.1 (January-March 2006): 120-121.

¹⁰ Carlos H Acuña a and Catalina Smulovitz, “Guarding the Guardians in Argentina,” in *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams (Notre Dame: University of Notre Dame Press, 1997): 96.

¹¹ Juan E Méndez, “In Defense of Transitional Justice,” in *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams (Notre Dame: University of Notre Dame Press, 1997): 13. This argument is also made by Aldana, 120-121.

¹² Rebecca Chavez, *The Rule of Law in Nascent Democracies* (Stanford: Stanford University Press, 2004): 3.

commitment to punish human rights abusers, trials can prevent vigilantism or assuage lingering social antagonisms that preclude democratic deepening.¹³

THE CRITICAL VIEW OF TRIALS

The skeptics of prosecutorial strategies argue that trials are not only unimportant for preventing future abuses, but potentially even counter-productive. The risk is that trials will provoke, rather than prevent, the meddling of anti-democratic “spoilers” or “standpatters.” In the extreme, attempts at prosecution can provoke a military coup that re-establishes authoritarian control. An important assumption is that non-prosecutorial strategies solve the immediate incentives for military intervention in democratic processes and/or allow for (but do not necessarily guarantee) the formation of political coalitions that are able to undermine or restrain authoritarian forces through other means.¹⁴ This line of logic does not suggest that trials will somehow directly increase human rights abuses. Rather, trials may undermine human rights protection in the long term through undercutting the prospect for effective democratic consolidation that is the most important safeguard for human rights.

A key pragmatist assumption is that rule of law and political stability stems from a sustainable political bargain struck between relevant political actors. Sa’adah, for instance, agrees with the premise that institutional creation is crucial to a stable democratic transition. However, strategies that “make the complicit acknowledge their responsibility” increase divisions in society. A central characteristic of successful democracies, she argues, is that they “systematically underprosecute and underpunish.”¹⁵ Snyder and Vinjamuri contend that “justice does not lead; it follows.” Creating rule of law requires “striking politically expedient bargains” that allow stable political factions to form and institutions to develop that are strong enough to protect the rule of law.¹⁶ Even accountability proponents recognize that a certain level of institutional capability is generally a prerequisite to holding legitimate trials that can boost the courts’ image. The paradox is that “trials work best when they are needed least.”¹⁷ Pragmatists argue that trials conducted under less than ideal situations exhaust limited financial resources and can demonstrate the weakness of rule of law if charges are seen as inadequately or arbitrarily imposed.

A CRITIQUE OF “COUNTRY TRIAL YEARS”

Sikkink and Walling make an attempt to quantify the scope and impact of the “justice cascade” that must be commended for its breadth and ambition.¹⁸ Their work

¹³ Luc Huyse, “Justice After Transition: On the Choices Successor Elites Make in Dealing With the Past,” in *Transitional Justice Volume I*, edited by Neil Kritz (Washington DC, United States Institute of Peace: 1995): 340.

¹⁴ Jack Snyder and Leslie Vinjamuri, “Trials and Errors Principles and Pragmatism in Strategies of Transitional Justice,” *International Security* 28:3 (Winter 2003/2004): 33-34.

¹⁵ Anne Sa’adah, “Regime Change: Lessons from Germany on Justice, Institution Building, and Democracy,” *Journal of Conflict Resolution* 50.3 (June 2006): 320.

¹⁶ Snyder and Vinjamuri, “Trials and Errors,” 6.

¹⁷ *Ibid.*, 20.

¹⁸ Sikkink and Walling, 428.

moves the transitional justice debate beyond the polemical divide drawn between the legalists and pragmatists and toward a more empirical approach. They argue that the scholarly juxtaposition of legislative amnesties against prosecution poorly captures the messy reality of transitional justice. Their research shows that in Latin America all but two countries that have attempted to prosecute human rights abusers have also passed some form of amnesty. Sikkink and Walling also find that in most circumstances, transitional justice is a long-term process that is rarely concluded immediately following the transition. Academic assumptions that discuss transitional justice as a one shot decision overlook the evolutionary process that commonly occurs. Sikkink and Walling show that research should move away from dichotomous comparisons between accountability trials and amnesties and toward measurements that can measure the quantity and/or quality of justice.

Sikkink and Walling's innovation is to measure country commitment to human rights trials in terms of a "country trial year" (CTY). The authors code the annual U.S. Department of State Country Reports on Human Rights Practices ("Country Reports") to record relevant judicial activity "in a given state or territory for each year."¹⁹ To be recorded as a CTY:

[J]udicial activity discussed in the report must inflict costs on a government agent accused of having *individual criminal responsibility* for human rights violations.... We include only human rights trials occurring in *transitional countries* – countries that have experienced or are undergoing regime change from an undemocratic regime to a more democratic political system marked by relatively free and fair elections.²⁰ (italics in original)

Sikkink and Walling use this new CTY measurement to test many of the arguments commonly made in the literature. Most simply, they use it to show that there has been a significant growth in judicial responses to human rights abuses beginning in the 1980s. This aspect of their research involves a global data set of all CTYs in all countries from 1979-2004. From there, they move to test common hypotheses about the impact of transitional justice, focusing exclusively on Latin America (the region of the world with the most CTYs). Sikkink and Walling conclude that the empirical record shows that there is a pronounced global "justice cascade," and that there is little empirical proof for the risks that realists have attributed to judicial strategies.

This paper advances two distinct critiques of Sikkink and Walling's dataset. The narrower criticism accepts *apropos* that a CTY measurement might be a meaningful tool for demonstrating the spread and scope of judicial methods of transitional justice. However, I argue that Sikkink and Walling's data set suffers from an excessively broad definition of transitional justice and coding errors significant enough to undermine some of their conclusions. The second critique focuses on the innate flaws of a duration based measurement of transitional judicial activity. I argue that there is no support in the secondary literature for the duration of transitional justice as a gauge of its

¹⁹ Ibid., 432.

²⁰ Ibid., 441.

effectiveness and that this measurement is poorly suited as a basis for making comparisons between countries.

SPECIFIC PROBLEMS WITH SIKKINK AND WALLING'S CTY METHODOLOGY

There are recognizable strengths to Sikkink and Walling's CTY measurement. It is an easy method of measurement since it requires reference to a single widely available source and it seems an adequate gauge of the growth of judicial responses to human rights issues in transitional countries. However, even for these limited purposes, Sikkink and Walling's CTY methodology contains serious flaws. First, Sikkink and Walling's definition of transitional justice and transitional countries is poorly conceptualized and inconsistent with the definitions used by the scholars they claim to refute. Second, even within the parameters they establish, there are errors in coding that are endemic enough to raise doubts about some of their conclusions.

This critique is substantiated by a review of the Country Reports and additional sources for the same time period that Sikkink and Walling have examined. While Sikkink and Walling record all CTYs globally, my review is limited exclusively to Latin America. This review of CTYs in Latin America does not refute Sikkink and Walling's argument that there has been a clear increase in judicial activity, though the phenomenon has not been as broad as claimed. Sikkink and Walling report 122 CTYs in 17 Latin American countries in the years spanning 1979 to 2004.²¹ My review of the same period identifies 125 CTYs in 13 different countries. The near agreement between the datasets on the total number of CTYs belies significant disagreement over which years should properly count as CTYs. My dataset of Latin American CTYs is consistent with Sikkink and Walling's dataset only 53% of the time.²²

A precise definition of transitional justice would limit it to justice mechanisms designed to respond to human rights violations occurring in a previous political context—either during a concluded military conflict or under an antecedent political regime.²³ Nearly all of the scholars Sikkink and Walling cite make their arguments explicitly in the context of a transition away from an authoritarian regime or in the wake of civil conflict. The phenomenon these scholars are concerned with is “retroactive

²¹ Sikkink and Walling actually claim there are 120, 121 or 122 total Latin American CTYs in different sections of their article. They write that there are 121 CTYs (432). However, the table listing all Latin American CTYs actually identifies 122 (Table IV, 441). Additionally, though Table IV identifies five CTYs for El Salvador, Table III lists El Salvador as having only four CTYs (Table I-III, 438-439). For my comparison, I rely on Table IV, where Sikkink and Walling list each country's CTYs.

²² In other words, my coding method results in 73 CTYs in agreement with Sikkink and Walling's coding and 65 instances in which there is disagreement. This revised CTY dataset is used several additional times in this paper. To be clear, the difference between this dataset and Sikkink and Walling's CTY dataset is (1) use of a narrower definition of transitional justice limited to trials that address crimes committed *before* any political transition (2) use of sources in addition to the Country Reports to discover CTYs and (3) correction of coding errors found in Sikkink and Walling's data.

²³ Louis Bickford, “Transitional Justice,” *The Encyclopedia of Genocide and Crimes Against Humanity*, ed. Dinah Shelton (Detroit: Macmillan Reference, 2004): 1045. The Encyclopedia notes that “The concept is commonly understood as a framework for confronting past abuse as a component of a major political transformation.”

justice.”²⁴ None of the academics Sikkink and Walling claim to engage with can be characterized as critical of human rights trials in all contexts. The issue is rather, to paraphrase Vinjamuri and Snyder, whether justice should lead or follow in transitional countries. There is little controversy that those consolidating democracies capable of punishing state agents that abuse human rights are better at managing human rights abuses than those countries that do not. The dataset developed needs to be able to test whether attention to human rights abuses in a previous political context contributes to managing contemporary human rights abuses.

Sikkink and Walling’s dataset does not reflect this common understanding of transitional justice because it includes CTYs from countries that are not transitional countries, and because it includes CTYs from countries that are transitional, but where the recorded judicial activity is not retroactive. Sikkink and Walling identify two parameters for inclusion in the data set: Judicial activity must occur in a country that undergoes a transition to a democracy with free elections sometime between 1979-2004, and the judicial activity must be in response to human rights abuses.²⁵ Despite this explicit focus on democratizing countries, Sikkink and Walling’s dataset includes at least one country—Venezuela—that did not experience a transition to democracy in the specified time period.²⁶ Further, their conflation of transitional countries with democratizing countries is potentially under-inclusive because it does not include those countries that have recently resolved a civil war.

A more widespread problem is that Sikkink and Walling’s dataset does not require that judicial activity be retroactive and related to the transition in order to be counted. This broad definition means that Sikkink and Walling count CTYs from two countries in the years prior to the transition to democracy (Chile in 1986 and Peru in 1978).²⁷ Also, human rights-related judicial activity that has no connection to abuses committed in a prior era is included. In four countries (Mexico, Ecuador, Venezuela and Nicaragua) every recorded CTY is related to contemporary human rights abuses. For other countries, not all human rights-related judicial activity is included in the data set. Coding appears fairly consistent within countries but not between countries. For example, Sikkink and Walling identify a CTY in Ecuador in 1993 (Ecuador has had a democratically elected government since 1979) as a CTY based on judicial action against police officials implicated in the 1985 murder of two brothers. In the same year Brazil’s indictment and detention of 28 military police for murdering 21 slum residents is clearly included in the Country Report, yet Brazil is recorded as having no CTYs whatsoever.

²⁴ Carlos Santiago Nino, *Radical Evil on Trial*, (New Haven: Yale University Press: 1996): 36.

²⁵ *Ibid.*, 441. The starting point is necessarily 1979 because this is the first year in which the Country Reports are published by the State Department.

²⁶ It is unclear how Sikkink and Walling’s identified their set of transitional countries comes. Their footnoted source, an article by Larry Diamond, does not contain a list of transitional countries but does identify Venezuela as one of the few democracies already established in Latin America in 1974. Larry Diamond, “Can the Whole World Become Democratic? Democracy, Development, and International Policies,” Center for the Study of Democracy, UC Irvine (2003), 2.

²⁷ Sikkink and Walling, 441 (Table IV).

The most troubling problem in the CTY measurements is the frequent coding errors that cannot be attributed to any methodological dispute over the parameters of transitional justice. Significant errors exist both in over-recording and under-recording CTYs.²⁸ A handful of examples illustrate this point. In Bolivia, none of the seven years of the trial of García Meza and 55 of his colleagues are included, except for 1995, when the fugitive Meza was arrested and extradited from Brazil. Sikkink and Walling's data also misses 2000, when a suit in the Inter-American Court of Human Rights impelled Bolivian judicial activity in the case of an individual that disappeared during the dictatorship preceding Meza's rule. The most significant trial in Haiti, the 2000 "Raboteau trial," in which 22 individuals were charged with massacring civilians, is also not recorded as a CTY. In Honduras, two years with incontrovertible judicial activity are not recorded. In Paraguay, the rule that only criminal proceedings are of interest was violated through recording of a CTY in which the only noted judicial activity was civil. These types of mistakes are common enough to raise serious doubt about the strength of the author's data.

A review of additional sources also casts doubt on the State Department Country Reports as a sufficiently comprehensive source for identifying all relevant judicial activity. News sources and publications from human rights groups identified nine additional years in various countries in which judicial activity meets the criteria to be recorded as a CTY. Two trials of high-level government officials (the 1993 trial of former Panamanian President Manuel Solís Palma and the 1994 trial of a former Interior Minister in Paraguay) are not included in the Country Reports at all, though other judicial activity is noted in those countries for those years. The Meza trial in Bolivia, a landmark trial of a former head of state, is not explicitly noted in the Country Reports until the fifth year of the trial.²⁹ In general, there is a clear upwards evolution in the quality of the Country Reports from the early 1980s as well as a bias toward "showcase" trials of large groups and trials in which the victims of crimes were U.S. citizens.

INTRINSIC LIMITS OF DURATION BASED MEASUREMENTS

Even a perfectly crafted and carefully coded CTY measurement has limited utility for measuring the impact of transitional justice on human rights improvements. Sikkink and Walling express hope that CTYs can be used to test the central argument advanced in favor of aggressive prosecution of past human rights abuses—that prosecution of past human rights abuses can deter or preempt future occurrences. Though they are careful to note that their methodology is not robust enough to advance any arguments about causality, Sikkink and Walling examine the correlation between CTYs and human rights improvements in Latin American countries. They use the Political Terror Scale (PTS), a dataset that measures government respect for the physical integrity rights of its citizens on a 1 to 5 scale (with one being the least rights abuses), to compare changes in government repression in countries with varying numbers of CTYs. The PTS is based both on the level of violence state agents regularly

²⁸ Appendix A includes a revised account of CTYs that can be compared to Sikkink and Walling's data.

²⁹ The Bolivian press referred to the Meza trial as the "trial of the century."

employ as well as the portion of the populace that suffers from repression.³⁰ The average PTS score for the five years prior to the first recorded CTY is compared to the average PTS for the ten years afterwards. Their data shows that the seven Latin American countries with the most trial years had an average improvement of 0.9, while the seven with fewer CTYs had an average improvement of only 0.3. Sikkink and Walling draw the tentative conclusion that “it may be the case that the presence or absence of trials leads to human rights scores different from what one would expect given the democracy scores by themselves.”³¹

The central problem with this attempt to use CTYs to test human rights improvement is that this measurement is not strongly supported by the relevant scholarly literature as a proxy for accountability. Sikkink and Walling’s article contains almost no explanation of what purported effect of trials their duration based measurement is intended to capture, or why the CTY measurement is the most appropriate proxy for assessing the impact of trials. In an earlier version of their paper, Sikkink and Walling claim that a high number of trial years is meaningful because it demonstrates “the persistence of judicial proceedings” and argue that “even judicial activity that does not lead to a conviction may impose significant costs on the accused.”³²

However, there is little support in the secondary literature for using the duration of transitional judicial activity as a measure of its effectiveness in imposing costs on human rights abusers. To begin with, the connection between the persistence of judicial proceedings and imposition of greater costs is ambiguous. It is plausible that numerous trial years indicate a country’s inability to close the book on human rights through efficient investigation and prosecution. In Latin America, judicial proceedings have been drawn out for a variety of reasons that cannot be considered evidence of prosecutorial thoroughness. These include lack of resources, lack of judicial or police capacity, political opposition, amnesty legislation, loss and destruction of evidence,

³⁰ Mark Gibney and Matthew Dalton, “The Political Terror Scale,” *Policy Studies and Developing Nations* 4 (1996): 73-74. The author’s explanation of the scale is reproduced in full below:

“Level 1: Countries... under a secure rule of law, people are not imprisoned for their view, and torture is rare or exceptional.... Political murders are extraordinarily rare.
 Level 2: There is a limited amount of imprisonment for nonviolent political activity. However, few are affected, torture and beatings are exceptional.... Political murder is rare.
 Level 3: There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without trial, for political views is accepted....
 Level 4: The practices of the Level 3 are expanded to larger numbers. Murders, disappearances, and torture are a common part of life.... In spite of its generality, on this level violence affects primarily those who interest themselves in politics or ideas.
 Level 5: The violence of Level 4 has been extended to the whole population.... The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals.”

³¹ Sikkink and Walling, 440

³² Kathryn Sikkink and Carrie Booth Walling, “Errors About Trials: The Emergence and Impact of the Justice Cascade” (March 27, 2006): 11, available at: <http://www.princeton.edu/~piirs/calendars/Sikkink%20paper.pdf>.

intimidation of witnesses and judges, incompetent or biased judges and prosecutors, expired statutes of limitations, inability by police to apprehend suspects, and extradition struggles. To the degree that the duration of judicial proceedings is discussed in the secondary literature, both the legalists and realists seem to regard a drawn out process as a problem, not a virtue. Huntington advises that if trials are to be held, they should be held “promptly (within one year of your coming to power)” before public interest runs out and so that the government can move on to other issues.³³ Human rights advocacy groups make frequent calls to expedite the judicial process, demonstrating that high CTYs are at least as likely to be indicative of the difficulties of achieving justice as they are to be indicative of justice achieved.³⁴

Even if it is true that weak or incomplete judicial proceedings shame and harass former rights abusers to the degree that they constitute an effective deterrent, this does not explain why prosecutorial strategies would inherently generate the institution and norm-building effects attributed to them. If investigations stall, if fewer persons or less senior officials are indicted than are commonly known to be culpable, or if trials frequently result in acquittals, it is unclear why the judicial legitimacy or the normative strength of the rule of law would be enhanced. While court cases may create an opportunity for truth-telling, if trials result in acquittals it seems more likely to entrench divisions over the interpretation of the past than offer closure. If the primary value of judicial proceedings is the imposition of penalties, as Sikkink and Walling seem to suggest, it is unclear why we should use a measurement that focuses exclusively on individual criminal penalties without including policies like lustration, purges or military reform that may be as or more effective at preempting institutional capacity to commit human rights abuses.³⁵

Finally, variance between legal systems also contributes to variances in trial years. Nearly all Latin American countries operate on a civil law system. In many civil law countries, judges have an inquisitorial rather than adjudicative role in criminal proceedings. This means that in countries like Chile, “judicial activity” begins in the investigative phase of a case, while in others there is no judicial involvement until the indictment stage. Some countries allow the government to appeal acquittals or weak sentences, while others have double jeopardy provisions that preclude government appeals. Some countries elect to pursue “showcase” trials of large groups for a variety of crimes, while in others prosecutions are diffuse. All of these country specific-factors influence the duration of judicial activity and serve as additional reasons that trial years serve as a poor basis for cross-country comparison.

³³ Huntington, 231.

³⁴ See for instance, “Honduras Still Waiting for Justice,” Amnesty International, April 1, 1998, <http://web.amnesty.org/library/Index/ENGAMR370041998>.

³⁵ Charles T. Call, “Democratisation, War and State-Building: Constructing the Rule of Law in El Salvador,” *Journal of Latin American Studies* 35.4 (November 2003): 835. For example, in El Salvador, the work of a government commission and a UN backed truth commission resulted in the “most thorough purge ever of a Latin American army not defeated in war,” despite a comprehensive amnesty for human rights abuses committed during the conflict.

THE CASE FOR A CONVICTION-BASED MEASUREMENT

Instead of a duration based measurement, the beneficial results ascribed to transitional justice by Sikkink and Walling and legalists more generally suggest that there are tacit assumptions about what characteristics effective legal proceedings must exhibit. The most important of these seems to be that prosecutions result in convictions. In this section, I begin by making a case for convictions as a strong measure of the effects ascribed to transitional justice and then develop a system for scoring conviction levels that is used to examine the correlation between transitional justice and human rights improvements.

The ultimate evidence of a working criminal justice system is that those guilty of perpetrating crimes are, through a fair process, found guilty of their crimes and punished. The legalist arguments in favor of transitional justice seem to tacitly assume the importance of conviction. While Sikkink and Walling might be right that judicial proceedings short of incarceration are enough of an inconvenience to have a deterrent effect, conviction is a more permanent and serious penalty. Furthermore, the symbolic censure and damage to institutional and personal reputation is much higher in the instance of conviction. Acquittal might exonerate officials, while stalled investigations or indictments send a weak and ambiguous message compared to a guilty verdict. Sikkink and Walling even assume that trials are meaningful because they entail a significant risk of conviction. They acknowledge that conviction is the key element in achieving the effects of deterrence and preemption that they are primarily interested in. They validate their CTY measurement by claiming that “convictions... are sufficiently common that judicial proceedings included in our data carry with them the possibility of genuine sanctions for perpetrators.”³⁶

Conviction would also seem to be crucial to building the rule of law and strengthening judicial institutions. In some instances, legal activity that leads to indictments but not convictions may be due to the weakness of judicial system. It could mean that innocents have been charged with crimes they did not commit, or that those who committed the crime go free. If effective judicial institutions strengthen the rule of law, successful prosecution of the right individuals is the strongest evidence that the judicial system works, most of the time, from start to finish. In the case of transitional justice trials, there is often a general presumption among the public and NGOs that individuals charged with the crime are guilty (and frequently they may be). In this context, improper acquittals, detention without charge, and indictments that are dismissed before trial eventually become evidence of judicial impotence. For instance, in Haiti the surprise acquittal in 1996 of two suspects accused of murdering a former justice minister, attributed to mistakes by the prosecution, forced the government to delay other pending trials.³⁷ Similarly, conviction also seems integral to truth-telling and democracy building effects. If truth-telling is done through the process of trials, conviction serves as official confirmation of the historical record of human rights abuses. Failure can inflame public sentiment. In Panama, the acquittal of soldiers

³⁶ Sikkink and Walling, “The Justice Cascade and the Impact of Human Rights Trials in Latin America,” 11.

³⁷ United States Department of State, *Country Report on Human Rights Practices* (1997).

accused of murdering a prominent human rights activists prompted days of country-wide protests.³⁸

I acknowledge that the number of convictions is not an entirely adequate measure of the elements that might characterize effective trials. The literature also assumes that trials will be fair and will afford a level of due process rights to the defendants.³⁹ Trials cannot strengthen the rule of law if they do not follow basic legal norms. Trials cannot serve the symbolic purpose of breaking with a history of unprincipled exercise of state violence unless they themselves represent a measured exercise of state power. Nonetheless, while fairness is a relevant antecedent condition, fairness alone does not make transitional justice effective. Examination of due process rights afforded should be a consideration when looking at outlier cases.

Second, quantity of conviction alone does not measure other qualitative concerns. One important consideration is who is convicted. High-level officials that are responsible for setting policy and organizing state repression are a more important and difficult target for prosecution than soldiers at the bottom of the chain of command. The conviction measurement I construct attempts to account for this qualitative measurement. However, there might be other factors that are relevant. For instance, even when convictions are achieved, human rights groups frequently complain that some of the accused were acquitted⁴⁰ or that sentences were too light.⁴¹ Parsimony weighs against a measurement that tries to take all of these particular factors into account. However, as more particular theories are developed to explain how transitional trials contribute to human rights protections, more precise measurements may provide more fine-tuned tests.

METHODOLOGY

Like Sikkink and Walling, I review the State Department Country Reports as a starting point for determining the prevalence of judicial activity. I also use the Human Rights Watch Annual Report, the Amnesty International Report, Inter-American Commission on Human Rights reports, local NGO reports and news sources, both international and local, to establish more precisely the number of successful convictions.⁴² I use the narrow definition of transitional justice as confined to judicial action addressing human rights abuses committed prior to a political transition. This dataset of convictions in each Latin American country is presented in Appendix A.

³⁸ *The Guardian*, “Panamanians Take to Streets Over Acquittals” (8 September 1993): 9.

³⁹ Aldana, 107.

⁴⁰ David Beard, “5 Guilty in Argentina Terror,” *Chicago Tribune* (10 December 1985): C1. For instance, the NGO response to Argentina’s 1985 conviction of five junta member was quite critical. Helen Bonafini, the president of the Mothers of the Plaza de Mayo called the trial a “fraud” and complained that “they were absolving criminals.”

⁴¹ Human Rights Watch, “Haiti,” in *Human Rights Watch World Report* (1997). Available at: <http://www.hrw.org/reports/1997/WR97/AMERICAS-05.htm>

⁴² Amnesty International Reports are annual for all countries (with a handful of exceptions), beginning in 1978. The Human Rights Watch Annual Report and the IACHR reports are also annual but are not comprehensive. Countries of particular concern are selected and covered on a year by year basis.

I convert the data into a six point scale so it can be used for cross-country comparison. The conviction measurement has both a vertical and a horizontal component. The vertical accountability measurement is based on how far up the chain of command a country is able to secure convictions. The rating is on a three point scale. A rating of zero indicates no convictions. A rating of one indicates that only low level military or police officers were successfully convicted. A rating of two indicates conviction of high-level officers that either possessed significant autonomy in setting the tactics of security institutions or were in a consultative role with heads of state/highest-level military officials. A rating of three is reserved for successful conviction of leaders at the highest level of government. A rating of three means the *de jure* and/or *de facto* head of state was convicted of human rights abuses.

The scope of convictions is also measured on a three point scale through a horizontal conviction rate. Convictions were measured as a percentage of the total estimated deaths and disappearances in each country, a number that is commonly available because of truth commission reports and NGO estimates. Where estimates of deaths and disappearances were expressed as an inexact range, the mid-level estimate was used. Admittedly, this is a rough standard of comparison. It is possible to imagine both a situation in which a relatively small sector of the security forces are responsible for a large number of human rights abuses (as in Honduras) and circumstances in which a large percentage of security forces have committed human rights abuses that fall short of extrajudicial execution and forced disappearance (as in Brazil). Still, this measurement provides a general standard for comparison. Countries with larger numbers of human rights abuses likely had more security personnel responsible for those abuses than countries with a less violent history of repression.⁴³

The ratio of convictions to deaths and disappearances turns out to be miniscule. In only three countries have there been more than five convictions per 100 individuals killed. A score of one indicates there were less than two successful convictions per 100 deaths or disappearances. A two indicates the conviction ratio was in between three and five percent. A score of three is reserved for a ratio higher than five percent.

Several dilemmas were confronted in coding the data. First, defining transitional justice as retroactive justice creates problems of its own. This requires marking the transition from autocracy to democracy or from conflict to a post-conflict situation in order to take a before and after measurement. In Latin America, this is clearest in cases where elections mark a clear break with an autocratic past or where a peace agreement formally concludes civil war.⁴⁴ When these clear transitional moments

⁴³ Neil Kritz, "Where We Are and How We Got Here: An Overview of Developments in the Search for Justice and Reconciliation," in *The Legacy of Abuse: Confronting the Past, Facing the Future*, edited by Alice Henkin (New York: The Aspen Institute Justice and Society Program: New York University School of Law: 2002): 35.

⁴⁴ Larry Diamond, "Is the Third Wave Over?" *Journal of Democracy* 7.3 (July 1996): 20-37. While scholars have increasingly recognized that elections are insufficient to constitute liberal democracy, in many Latin American countries, especially in the Southern Cone, they have often marked a symbolic rupture and triggered self-conscious debates over retroactive justice.

exist, I use them as a measurement point.⁴⁵ The exception is the case of Honduras, where despite a relatively free and fair election in 1983, death squads operated at will and the executive had little control over security forces until conflicts in neighboring El Salvador and Nicaragua ended. In this instance, an amnesty passed in 1991 serves to mark the transitional moment.

Second, three Latin American countries (Bolivia, Panama and Haiti) tried and convicted officials in absentia. The question was whether to treat these convictions the same as those that resulted in officials facing jail time. Human rights organizations and the public generally seem to regard trials in absentia with suspicion. In Bolivia, García Meza eluded capture for several years after his conviction, raising public speculation that the government was secretly supporting his escape from punishment.⁴⁶ In Haiti, human rights groups regarded the 1995 conviction in absentia of a large number of high-level officials with ambivalence, considering it better than nothing but also expressing frustration with the government's failure to exert the will to truly punish those culpable.⁴⁷ However, trials still represent significant state investment in order to successfully make a case and they can signal that state officials are not above the law. Ultimately, as a compromise, convictions in absentia were not counted toward the vertical conviction measurement but were included in the horizontal measurement.

A final difficulty was determining how to treat convictions that were later overruled in appeals, commuted by the executive, or annulled by legislative amnesties. In Argentina, President Carlos Menem pushed through an amnesty that annulled the landmark convictions conducted under his predecessor. In Bolivia, the short sentences imposed on many of the cabinet members in García Meza's government were quickly commuted.⁴⁸ Judicial reversal of conviction on appeal is less common than might be expected, but appeals are frequently successful at paring down charges and reducing sentences. Ultimately, I chose to include all convictions that were reversed by other political branches but not any cases dismissed in the appeals process. Conviction shows that the judicial branch has an autonomous capacity to carry a case through from investigation to sentencing, whether or not that result is annulled by other democratic branches. This also gives the benefit of the doubt to advocates of trials like Acuña and Smulovitz, who argue that pardons given in the wake of convictions do not destroy the

⁴⁵ A partial list of 3rd wave transitions in Latin America is provided in Scott Mainwaring and Frances Hagopian, "The Third Wave of Democratization in Latin America," In *The Third Wave of Democratization in Latin America Advances and Setbacks*. Edited by Frances Hagopian and Scott Mainwaring (New York: Cambridge University Press: 2005), 3.

⁴⁶ *NotiSur*, "Bolivia: Former President Garcia Meza Loses Fight to Block Extradition From Brazil" (28 October 1994) Available at: <http://ssdc.ucsd.edu/news/notisur/h94/notisur.19941028.html>.

⁴⁷ Dan Coughlin, "Haiti: Human Rights Groups Cool to Coup Conviction," *IPS-Inter Press Service* (28 September 1995). In Haiti, individuals convicted in absentia are entitled to a new trial if they return to Haiti, meaning that convictions in absentia are purely symbolic.

⁴⁸ Rene Antonio Mayorga, "Bolivia's Dictatorship on Trial," in *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams, (Notre Dame: University of Notre Dame Press, 1997): 85. Most of these officials had sentences of three years.

symbolic value of the trial since they are extended to the military from a position of strength, while an amnesty during the transition signals capitulation.⁴⁹

THE CONVICTION RATING AND PROTECTION OF HUMAN RIGHTS

Following Sikkink and Walling's model, I used this conviction rating to examine the correlation between successful prosecutions and improvement in human rights, measured via the Political Terror Scale. I also compare the average PTS score from five years before the first conviction to the average score of the ten years following the first conviction.

My use of PTS data does vary from Sikkink and Walling in several significant ways. First, the more particular definition of transitional justice used means that some Latin American countries can be included in the data twice, since they have multiple transitions to and from electoral government during the time period (Haiti) or transition to democracy during civil conflicts that are later concluded (Nicaragua, El Salvador and Guatemala). In Haiti and Nicaragua, however, the window between the first transition and the second is so small that a meaningful second measurement is impossible. In El Salvador and Guatemala, the transitions are staggered enough that each serves as two separate cases. After its transition to democracy, El Salvador convicted several military personnel of crimes committed before the democratic transition, while passage of a comprehensive amnesty precluded successful convictions after the end of conflict in 1992. Guatemala had no convictions in the years after its switch to electoral democracy, but has made slow progress toward trying and convicting individuals not covered by its more limited amnesty since the conclusion of its civil war. There are also three third wave democratic transitions (Ecuador, the Dominican Republic and Peru) that occurred too early to be included in the data set because there is no PTS score available prior to 1980. Similarly, there are several transitions that are recent enough that ten full years of PTS scores following the transition are not available. These countries were still included as long as there was a minimum of five usable years of post-transition PTS scores to average.

My data includes seven transitional countries with a conviction rating of zero, which offers a stronger baseline for comparison against those countries with convictions than the two countries Sikkink and Walling identify with zero CTYs. The difficulty in comparing countries with convictions to those without is selecting the relevant window of time in non-conviction countries for the before and after measurement of the PTS. In countries with no convictions, rather than measuring from the date of transition (i.e. the democratic election or peace accord), I measure from two years after the transition date. This is because measuring from the date of transition presumably skews the data in favor of the no conviction countries. This average is more likely to reflect the improvement in human rights associated with the transition to democracy, while countries with convictions are generally measured several years after any transition when some improvements in human rights has usually already been realized. With a

⁴⁹ Acuña and Smulovitz, 116-117. Acuña and Smulovitz claim that sustained improvements Argentina's human rights situation and judicial system since 1983 can be attributed to the successful convictions of former junta members in 1983, despite Menem's amnesty.

few exceptions, most countries that successfully prosecute achieve their first conviction two or three years after the transition. This is why the median lag time of two years serves as the measurement point for non-conviction countries—the contribution to human rights protections that convictions might generate are most likely to begin at this stage in the democratic transition.

Table 1. Conviction lag time

Country	Conviction Lag Time in Years
Argentina	2
Bolivia	11
Chile	3
El Salvador	2
Haiti (post-Duvalier)	0
Haiti (post-Cedras)	1
Honduras	8
Guatemala	1
Panama	2
Paraguay	3
Mean	3.3
Median	2

My treatment of the PTS includes one final difference from Sikkink and Walling. The PTS dataset includes two scores per country per year. One is based on the coding of the Amnesty International Report and the other comes from the State Department Country Reports. Sikkink and Walling only use the score from the Amnesty Report in their data. Presumably this is because they want to avoid using the Country Reports as the source of the measurement of both the dependent and independent variable. However, the PTS coders do not appear to look at judicial activity in determining their score and Amnesty reports also include frequent reporting of trial activity.⁵⁰ Because the annual scores frequently vary between the Amnesty and State Department sources, I used both scores for an average measurement, following the most common approach of researchers using the PTS.⁵¹

⁵⁰ Gibney and Dalton, 80. While the PTS's coders do focus exclusively on the section of the Country Reports that most frequently also reports judicial activity, coders are interested in government involvement in perpetrating human rights abuses rather than government response to abuses after they have occurred. The only suggestion that judicial activity might influence scoring is that in close cases, coders are instructed to be attentive to descriptions of "improvements" in the human rights situation or the use of other optimistic adjectives. These sorts of descriptors often accompany upsurges in judicial activity on human rights cases.

⁵¹ Claire Apodaca, "The Globalization of Capital in East and Southeast Asia: Measuring the Impact on Human Rights Standards," *Asian Survey* 42.6 (November-December 2002): 891. Mark Gibney, Stephen Caliendo and Angela Payne, "All the News That's Fit to Print? New York Times Coverage of Human Rights Violations," *The Harvard Journal of Press Politics* 4.4 (Fall 1999): 52. Steven Poe, Wesley Milner and David LeBlang, "Security Rights, Subsistence Rights and Liberties: A Theoretical Survey of the Empirical Landscape," *Human Rights Quarterly* 21.2 (May 1999): 421.

Apodaca claims that it is the "scholarly precedent" to average the two scores. One of the authors of the PTS, Mark Gibney, states that averaging both measures "allows for a truer measure of human rights abuse." Steven Poe chooses to use only the Amnesty based PTS score but this is because he argues that the State Department reports "exhibit biases" that weaken their reliability. Given that Sikkink and

The results of the data are presented below in Table 3. The four countries with the highest conviction rating (4 or greater) all show decreases in their PTS, averaging an improvement of .66. However, countries with mid to low level conviction levels had on average an improvement in PTS score *lower* than those countries with a zero conviction rating. Half of the mid range countries actually showed an increase in human rights abuses. The average PTS improvement in zero conviction countries was only slightly lower than in the high conviction countries, though improvement was not as consistent.

THE EFFECTS OF CONVICTIONS ON HUMAN RIGHTS IN LATIN AMERICA

Transitional Countries with high conviction ratings

Country	Conviction Rating (Vertical/Horizontal)	Pre-conviction PTS average	Post-conviction PTS average	Change in average
Bolivia	6 (3, 3)	2.5	2.2	0.3
Grenada	6 (3, 3)	2	1	1
Panama	5 (2, 3)	2.8	2	0.8
Argentina	4 (3, 1)	2.7	2.15	0.55
Average Change				0.66

Transitional Countries with low conviction ratings

Country	Conviction Rating (Vertical/Horizontal)	Pre-conviction PTS average	Post-conviction PTS average	Change in average
Haiti (post-Cedras)	3 (1, 2)	3.2	3.5	-0.3
Chile	3 (2, 1)	2.9	2	0.9
Paraguay	3 (2, 1)	2.5	2.6	-0.1
Guatemala (post peace accord)	2 (1,1)	3.9	3	0.9
El Salvador (post democratization)	2 (1,1)	4.5	3.95	0.55
Honduras	2 (1,1)	2.5	3	-0.5
Average Change				0.24

Transitional Countries with no convictions

Country	Conviction Rating	Pre-conviction PTS average	Post-conviction PTS average	Change in average
Brazil	0	3.3	3.95	-0.65
El Salvador (post peace accord)	0	3.7	2.6	1.1
Guatemala (post democratization)	0	4.2	4.05	.15
Guyana	0	2	2.25	-0.25
Nicaragua	0	3	2.9	0.1
Suriname	0	3.3	1.7	1.6
Uruguay	0	2.4	1.8	0.6
Average Change				0.38

Walling rely exclusively on State Department reports for their central CTY measurement, this cannot explain their failure to use averaged PTS scores.

INTERPRETING THE RESULTS

Like Sikkink and Walling, I caution that this comparison is not sophisticated enough to draw any conclusions about the causal relationship between trials and human rights. The clearest conclusion that can be drawn from the evidence is that successful prosecution is not necessarily a prerequisite for human rights improvements in transitional countries. Countries in both the mid-level and zero conviction groups have achieved human rights improvements as large as any in the high conviction group. This suggests that prosecution is unlikely to be the most important variable in determining the prevalence of human rights abuses. Even if in some circumstances retroactive justice might aid in human rights consolidation, it does not appear to be the only path to prevention.

However, the data does show that the four countries with the greatest success in achieving convictions (Grenada, Bolivia, Panama and Argentina) also may have been the most successful, as a group, in decreasing human rights abuses. While the average improvement for this group was higher than the mid conviction and zero conviction groups, it is unclear how significant this statistic is. The difference in average PTS score between the high conviction and low conviction countries is 0.42, a number that has no interpretable meaning on the five point PTS.⁵² Also, since the variance in the mid-level conviction group is very high, with three of the six cases showing a decrease in PTS scores, averaging the PTS improvement of this group does not seem like a meaningful measurement. The factor that seems most salient is the consistency of improvement in human rights in the high conviction group. All of the countries with high conviction ratings showed sustainable gains in human rights protection and none had reversals. This suggests either that aggressive and successful prosecution may strengthen human rights or that the conditions that make successful prosecution possible also lead to human rights improvements. Four of the six countries with no convictions also show consistent improvements in human rights, accentuating the conclusion that conviction is not necessary for strengthening human rights. For the two countries in this category that show a decrease in PTS scores (Brazil and Guyana) the failure to protect human rights seems due to state incapacity to manage a surge in violent crime.⁵³ It is seems unlikely that escalating police brutality in these circumstances is attributable to failure to prosecute authoritarian figures in the wake of democratization.

⁵² George Lopez and Michael Stohl, "Problems of Concept and Measurement in the Study of Human Rights," in *Human Rights and Statistics: Getting the Record Straight*, ed. Thomas Jabine and Richard Claude (Philadelphia: University of Pennsylvania Press: 1992): 228-229. This criticism also applies to Sikkink and Walling's data, which also reports only a fractional difference between the average PTS improvement of countries with numerous CTYs and countries with few CTYs. They show that countries with many CTYs have an improvement in PTS scores 0.6 higher than those with fewer CTYs.

⁵³ Teresa Caldeira and James Holston, "Democracy and Violence in Brazil," *Comparative Studies in Society and History* 41.4 (October 1999): 694-699. *Amnesty International*, "Guyana Human Rights and Crime Control: Not Mutually Exclusive" (13 January 2003) Available at: <http://web.amnesty.org/library/Index/ENGAMR350032003?open&of=ENG-GUY>.

The deterioration of human rights in Brazil is probably because of the growth of drug related organized crime alongside an exceptionally unequal distribution of wealth. High rates of violent crime have led to toleration of police brutality and vigilantism as a legitimate response by some segments of the public.

This pattern does not fit well with legalist arguments about the benefits of trials. Trials do not appear to be closely correlated with human rights improvement. In at least three instances, countries that have achieved some convictions have also seen an increase in human rights abuses. A consistent correlation between convictions and human rights protection is evident only in the high conviction countries. It might be tempting to read this as some indication that more successful prosecution leads to a decrease in human rights abuses, confirming legalist arguments. However, the relative success of the low-conviction countries in improving human rights abuses is hard to reconcile with this interpretation. The legalist arguments instead seem to support a linear relationship where more prosecution is always better than less. The evidence instead shows that a rate of zero convictions is not anathema to human rights protection.

CONCLUSION

Sikkink and Walling have taken the first step of moving the transitional justice field toward an empirical reassessment of the core arguments on both sides of the debate. Nearly three decades of experimentation with transitional justice strategies in countries around the world provides a track record that should now enable researchers to test the arguments made by advocates and critics of transitional justice. The first step in this process is developing measurements of transitional justice that capture the elements of the phenomenon scholars and advocates have claimed are significant. This paper argues that Sikkink and Walling's measurement of Country Trial Years is a poor proxy for measuring the effectiveness of prosecution, since the duration of trials is as likely to be evidence of frustrated efforts to pursue human rights abuses as it is to be evidence of the zealous pursuit of justice.

Instead, this paper advocates and develops a measurement of success in securing convictions as a more accurate gauge of how effective countries have been in holding human rights abusers accountable through prosecutorial strategies. While this measurement might not capture all of the component elements of a successful trial, it is particularly useful proxy for capturing the ability of trials to incapacitate and deter human rights abusers.

A preliminary comparison of the correlation between conviction rate and human rights abuses in Latin Americans suggests that, in the minimum, successful prosecution has not been the only path to human rights improvement in Latin America. More complex statistical work is necessary to draw conclusions about whether prosecution contributes at all to human rights improvements, or whether success in achieving conviction follows, rather than leads, improvements in human rights. Sikkink and Walling may be right that fears that trials will precipitate renewed conflict or cause democratic backsliding are inaccurate. However, the reality may be that the extremes of both sides of the debate have little foundation—trials do not pose dire risks to transitional countries, but neither are they essential for human rights improvement.

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APPENDIX A: COUNTRY CONVICTIONS AND TRIAL YEARS

Code:

* indicates individual has already been convicted of human rights abuses.

† indicates individual was convicted in absentia.

Argentina:

Country Trial Years: (20) 1983-1990, 1993-2004

Total Persons Convicted: 15

December 9, 1985	Jorge Videla, former Argentine President and Army General and Emilio Massera, former Navy Commander convicted of aggravated murder, kidnapping, torture and theft and sentenced to life in prison. Roberto Viola, former President and Army General, sentenced to 17 years in prison. Armando Lambruschini, former Navy Commander, sentenced to 8 years in prison and Orlando Agosti, former air force commander sentenced to 4 and 1/2 years (All pardoned by President Carlos Menem in 1990)
December 2, 1986	Ramon Camps, Army General and former police chief of Buenos Aires, Olvidio P. Riccheri, Army General and former police chief convicted of torture and sentenced to 25 years and 14 years in prison, respectively. General Miguel Etchecolatz., former Police Commissary sentenced to 23 years, police Corporal Norberto Cozzani sentenced to 4 years and police doctor Jorge A. Berges sentenced to 6 years (all annulled by the Supreme Court in accordance with new amnesty laws in 1987).
1994	Roberto Buletti, Felix Miera and Ignacio Baez, former police officers, convicted of the kidnapping and murder of Eduardo Oxenford, Benjamin Neumann and Osvaldo Sivak and sentenced to life in prison
June 2001	Lieutenant Colonel Cerefino Landa convicted of the kidnapping and substitution of identity of Claudia Poblete and sentenced to 9 and 1/2 years in prison
August 2001	Colonel Hernan Antonio Tetzlaff convicted of the illegal adoption of Hilda Victoria Montenegro and sentenced to 8 years in prison
March 2004	Jorge Berges* and Miguel Etchecolatz* convicted of kidnapping and substitution of identity of Carmen Gallo Sanz and sentenced to 7 years in prison.

Bolivia

Country Trial Years: (12) 1983, 1984, 1986-1993, 2000, 2001, 2002

Total Persons Convicted: 48

April 21, 1993	General Luis García Meza, [†] former head of state and initiator of coup d'état, convicted of 36 charges including murder, sedition, theft, fraud, genocide and violating the constitution, and sentenced to 234 years in prison (only 30 to be served as per Bolivian law)
April 21, 1993	Colonel Luis Arce Gomez, [†] former interior minister found guilty of murder and genocide and sentenced to 30 years in prison
April 21, 1993	16 former cabinet members, "mostly high ranking military officials," (HRW, 1993) convicted of issuing unconstitutional decrees and sentenced from 1 to 6 years in prison. 13 former paramilitary agents found guilty of murder and/or genocide and sentenced to 20 or 30 years in prison, 8 paramilitary agents convicted of armed insurrection and sentenced to 15 years in prison, agent Gil Andrés Ivanovic Tapia convicted of criminal association and sentenced to one year in prison, 8 other individuals convicted of corruption or other crimes
March 14, 1995	García Meza extradited from Brazil to Bolivia to serve his thirty year sentence

Chile

Country Trial Years: (15) 1990-2004

Total Persons Convicted: 52

November 1993	General Manuel Contreras, former director of the Army Intelligence Directorate (DINA) and Colonel Pedro Espinoza, former deputy director of DINA, convicted of planning murder Orlando Letelier and Ronnie Moffit and sentenced to 7 years and six years, respectively
October 1994	Two former police officers convicted of the abduction and disappearance of two Mapuche Indians
March 1994	15 members of the DICOMCAR intelligence unit of Carabineros and one civilian agent convicted of the abduction and murder of Communist Party members Santiago Nattino, Manuel Guerrero and Jose Stopped Manuel. 5 individuals sentenced to life in prison, including ex-Colonel Guillermo González, ex-Captain Patricio Zamora Rodriguez, civilian agent Estay Reyno Miguel and Alejandro Sáez.
August 1995	Carlos Herrera, retired army major, and Armando Cabrera, ex-Carabinero noncommissioned officer, convicted of unnecessary violence resulting in the death of Mario Fernandez and sentenced to 10 and 6 years in prison, respectively
July 20, 2000	Alvaro Corbalán, former director of the National Information Center (CNI) sentence and Carlos Herrera Jiménez, former major and CNI agent, convicted of the kidnapping and disappearance of Juan Alegria Mundaca and sentenced to life in prison. Armando Cabrera Aguilar, ex CNI agent, and Osvaldo Pincetti, ex CNI civilian agent, sentenced to 10 years in prison.
August 5, 2002	Ramses Arturo Alvarez Sgolia, retired general and former director of DINA, convicted of the murder of Tucapel Jimenez and sentenced to 10 years in prison. Carlos Alberto Herrera Jimenez,* convicted of murder and sentenced to life in prison. Victor Raul Pinto Perez, retired Brigadier General and Francisco Maximiliano Ferrer Lima, retired Lieutenant Colonel, convicted of murder and sentenced to 8 years in prison. Manuel Segundo Contreras Donaire, non-commissioned officer and Miguel Segundo Letelier Verdugo, convicted of murder and sentenced to six years in prison. Juan Carlos Arriagada Echeverria, former Major and civilian Luis Leon Alessandrini convicted of accomplice to murder and sentenced to 3 years (suspended). Retired Gen Hernan Alejandro Ramirez Hald, retired Gen Hernan Ramirez Rurangue, retired General, former Army Attorney-General Juan Fernando Torres Silva and retired Col Enrique Gabriel Ibarra Chamorro convicted as accessories to murder, with sentences suspended.
April 15, 2003	General Manuel Contreras,* former director of DINA convicted of the kidnapping and disappearance of Carlos Sandoval and sentenced to 12 years in prison. Miguel Krasnoff, former brigadier general with DINA and former army Colonel. Marcelo Moren Brito convicted of being authors of the crime and sentenced to 10 and 11 years, respectively. Former Brigadier General Fernando Lauriani Maturana and former Carabinero Col. Geraldo Godoy Garcia convicted as accomplices and sentenced to 5 years.
August 2003	Colonel Hugo Cardemil Valenzuela, ex-governor of Parral, convicted of the kidnapping and disappearance of 17 individuals, and sentenced to 17 years in prison. Pablo Caulier Grant, Carbinero colonel and Luis Alberto Hidalgo, Carabinero sergeant major, sentenced to 10 years and 7 years, respectively.
April 2004	Major Álvaro Corbalán Castilla,* convicted of the kidnapping of Carlos Sandoval and sentenced to 10 years in prison.
May 2004	General Manuel Contreras* and Miguel Krasnoff* convicted in the abduction and disappearance of Diana Aron Svigilsky and sentenced 15 years in prison. Pedro Espinoza,* Colonel Marcelo Moren Brito and Osvaldo Romo sentenced to 10 years in prison.
May 2004	Major Alvaro Corbalán Castilla* and Sergio Diaz Lopez, ex DINA official, convicted of the kidnapping and disappearance of Juan Luis Rivera Matus and

	sentenced to ten years in prison. Freddy Ruiz Bunger, former head of Air Force intelligence and Carlos Madrid convicted of accessory after the fact and sentenced to 600 days in jail (suspended).
May 2004	Oswaldo Romo Mena,* former DINA agent, convicted of kidnapping Jorge Espinoza Méndez
May 2004	ex DINA agents Brigadier General Miguel Krassnoff,* Colonel Marcelo Moren Brito,* Basclay Zapata and Oswaldo Romo,* convicted of kidnapping Elsa Leuthner, Maria González, Hernán González and Ricardo Troncoso Muñoz and sentenced to ten years in prison
November 2004	Manuel Contreras,* convicted of the kidnapping of Luis Dagoberto San Martín Vergara and sentenced to 15 years in prison. Raúl Iturriaga Neuman, former Brigadier General, sentenced to 10 years. Miguel Krassnoff* and Gerardo Urrich, former Brigadier General, sentenced to 3 years.
December 2004	Ex-DINA agents Miguel Krassnoff,* Marcelo Moren Brito,* Oswaldo Romo Mena* and Rolf Wenderoth convicted of the kidnapping of Edgardo Cortez Joo and sentenced to 10 years in prison. Basclay Zapata* sentenced to five years in prison.
December 2004	Guillermo Gómez Aguilar, former sub-director of the Air Force Special School, convicted of the kidnapping of Gabriel Marfull González and sentenced to five years in prison.

El Salvador

Country Trial Years: (8) 1983, 1984, 1985, 1986, 1988, 1990, 1991, 1992

Total Persons Convicted: 9

Trials post-democratic transition

August 1983	Sergeant Jose Mario Solozano, commander of a provincial civil defense force convicted of murder and sentenced to 30 years in prison
May 1984	Jose Moreno, Daniel Canales, Francisco Contreras Recinos, Carlos Contreras Palacios and Luis Colindres Aleman, five former guardsmen found guilty of the murder of four American churchwomen, Ita Ford, Maura Clark, Dorothy Kazel and Jean Donovan and sentenced to 30 years in prison
February 14, 1986	Jose Dimas Valle Acevedo and Gómez González, National Guardsmen, convicted of the murder of Michael Hammer, Mark David Pearlman and Jose Rodolfo Viera and sentenced to 30 years in prison (released because of amnesty legislation in 1987)
June 13, 1990	One army private convicted of the murder of Michael Kline and sentenced to 16 years in prison

Grenada

Country Trial Years: (6) 1985, 1986, 1988, 1989, 1990, 1991

Total Persons Convicted: 17

December 1986	Bernard Coard, former Deputy Prime Minister and leader of the successful 1983 coup d'état, Phyllis Coard, member of the Central Committee, Hudson Austin, head of the People's Revolutionary Army, Colonel Ewart Layne, Stelwyn Steachan, former Mobilization Minister, and 9 other individuals convicted of the murder of Maurice Bishop and 11 others and sentenced to death, (later commuted to life in prison)
December 1986	3 individuals convicted of manslaughter of Maurice Bishop and others sentenced to 30-45 years in prison
July 12, 1991	All convictions upheld by appeals court

Guatemala

Country Trial Years: (12) 1986, 1987, 1988, 1996-2004

Total Persons Convicted: 36

January 1997	Carlos Morales Sosa, former military commissioner, convicted of the murder of Henry Yubani and sentenced to ten years in prison
July 1997	Carlos Venancio Escobar Fernández, former deputy director of the National Police Fifth Precinct convicted of the unintentional homicide of Mario Alioto Lopez Sanchez and sentenced to 30 years in prison. Others convicted in the case freed on appeal.
September 1997	Armando Tucubal, former military commissioner, convicted of the murder of Pascual Serech and sentenced to 20 years in prison (lengthened to 30 years in 1999).
January 1998	12 members of a civil defense patrol convicted of killing Juan Pablo Chanay and sentenced to 10 years in prison (lengthened to 25 years in July, all freed from jail by a mob in 1999)
February 1998	Obdulio Villanueva Arevalo, member of the Presidential Military Staff, convicted of the voluntary manslaughter of Pedro Sas Rompich and sentenced to 5 years in prison (sentence commuted).
November 1998	Fermin Lajuj, Pedro Gonzalez Gomez and Carlos Chen, former PAC members convicted of murder in the Rio Negro and Agua Fria massacres and sentenced to death (sentence reduced to 50 years in prison in 2000).
November 1999	Candido Noriega, former military commissioner, found guilty of six counts of murder and two cases of manslaughter and sentenced to 220 years in prison.
January 2000	Vicente Cifuentes Lopez, former PAC member, convicted of the murder of Nicolas Blake and sentenced to 28 years in prison.
October 2002	Juan Valencia Osorio, former Army colonel and assistant director of the military intelligence unit Estado Mayor Presidencial, convicted of ordering the murder of Myrna Mack and sentenced to 30 years in prison (escaped from police custody).
July 2004	1 lieutenant and 13 enlisted troops convicted of the murder of 11 individuals and injury to 35 civilians in the Xaman massacre and sentenced to 40 years in prison.

Haiti

Country Year Trials: (9) 1986, 1987, 1989, 1995, 1996, 1997, 1999, 2000, 2004

Total Persons Convicted (post Jean-Claude Duvalier): 5

Total Persons Convicted (post Raul Cedras): 71

Trials post Jean-Claude Duvalier Regime

April 4, 1986	Warrant officer convicted of ordering the fatal beating of schoolteacher and sentenced to 1 year in prison
May 30, 1986	Lieutenant Coronel Samuel Jeremi convicted of the murder of Jean Sylvestre and sentenced to 15 years in prison
June 17, 1986	Luc Desyr/Desir, former chief of security and head of the paramilitary police force the Tonton Macoutes, convicted of murder and torture and sentenced to death.
July 22, 1986	Edouard Paul, former director of the literacy office and the National Action Committee For Jean-Claudism (CONAJEC) convicted of complicity in the murder of Pierre Denis and sentenced to 3 years in prison.
February 10, 1987	Adherbal l'Herisson, member of the Tonton Macoute, convicted of murder and sentenced to death.

Trials post Raul Cedras Regime

June 1995	Jean Emery Priam,† former army lieutenant, convicted of torture and murder of Jean-Claude Museau and sentenced to 60 years in prison
August 1995	Captain Joanis Jackson convicted of the murder of Antoine Izméry and sentenced to life in prison

August 1995	Gerard Gustave, former civilian attaché to the military, convicted of the murder of Antoine Izméry and sentenced to life in prison
September 27, 1995	Louis Jodel Chamblain, [†] co-leader of the paramilitary group Front for the Advancement and Progress of Haiti FRAPH, Michel Francois, former Port-Au-Prince police chief, Maj. Mark Kernizan, Claudette Gourdet Saint Albin, and 13 others convicted, all in absentia, for the murder of Antoine Izméry and sentenced to life in prison.
November 9, 2000	12 individuals (eight former members of the military, the highest ranked a captain and four paramilitary members,) convicted of murder in the Raboteau massacre and sentenced to life in prison. 4 individuals convicted of lesser charges ranging from conspiracy to manslaughter and sentence for 4 to 9 years.
November 11, 2000	General Raoul Cédras, commander in chief of the FADH and former head of state) General Phillipe Biamby, chief of the General Staff, Michel Francois, former Port-Au-Prince police chief, Col. Carl Dorelien, Col. Herbert Valmond, and 32 others, convicted of murder, all in absentia, for the Raboteau massacre and sentenced to life in prison

Honduras

Country Trial Years: (10) 1995-2004

Total Persons Convicted: 4

October 1999	Marco Tulio Regalado Hernandez, lieutenant with military Intelligence Battalion 3-16, convicted of the murder of Herminio Deras and sentenced to 12 years in prison.
May 2003	Juan Blas Salazar Meza, Lieutenant Colonel and former director of the National Intelligence Directorate (DNI), convicted of illegal detention and sentenced to 4 years in prison
2004	Juan Blas Salazar Meza,* German Antonio McNeil Ulloa and José Marcos Fernández, former DNI agents, convicted of the illegal detention of Luis Manuel Figueroa Guillén and sentenced to 1 year and 8 months in prison

Panama

Country Trial Years: (11) 1991-1998, 2002, 2003, 2004

Total Persons Convicted: 33

1991	Olmeda Espinosa, former Panama Defense Forces (PDF), convicted of the murder of Nicolas Van Kleff sentenced to 16 years in prison
1991	Jose Maria Chaverri, former PDF Captain, convicted of extortion and sentenced to 42 months in jail
1991	Rigoberto Paredes, former Revolutionary Democratic Party legislator, convicted of involvement in a paramilitary massacre and sentenced to three years in prison
March 1992	Felipe Camargo, former PDF Major and intelligence officer, convicted of brutality and sentenced to 40 months in prison
1992	Alberto Velasquez, ex-Provincial Governor, convicted of violating press freedom and sentenced to 2 and 1/2 years in prison
1992	Jorge Correa, former director of Modelo prison, convicted of human rights violations and sentenced to 3 and 1/2 years in prison
October 1993	Manuel Noriega, [†] former defense chief and de facto dictator, former PDF soldiers Julio Cesar Miranda and Francisco Eliecer Gonzalez Bonilla, convicted of the murder of Dr. Hugo Spadafora and sentenced to 20 years in prison
November 1993	Nivaldo Madrinan, former PDF Lieutenant Colonel, Melbourne Walker, former Captain and soldier Nelson Eugenio Magallon [†] convicted of the murder of priest Hector Gallego and sentenced to 15 years in prison
June 7, 1993	Manuel Solis Palma, [†] former President, Arturo Marguines, Enrique Thompson and

	Benjamin Colamarco (commanders of paramilitary battalions) convicted of illegally forming paramilitary forces and sentenced to 44 months and 10 days in prison
January 1994	Nivaldo Madrinan,* former head of the National Investigation Directorate, Felipe Camargo* and Luis Cordoba, former majors in the PDF, convicted of the kidnapping and murder of Eduardo Sanchez and sentenced to 15 years in prison
March 1994	Manuel Noriega ^{†*} and Heraclides Sucre, [†] former PDF Captain, convicted of the murder of PDF Major Moises Giroldi and sentenced to 20 years imprisonment
May 1994	Melbourne Walker, Eugenio Nelson Magallon [†] and one other former PDF member convicted of the murder and kidnapping of Hector Gallegos and sentenced to 15 years in prison
September 1994	Felipe Camargo,* and 5 others convicted of human rights violations against Alberto Conte, Leonard Figueroa and Milton Castillo
July 1995	Eliecer Gaytan, [†] former PDF Major, Evidelio Quiel [†] former PDF Captain and Gonzalo Gonzalez [†] convicted of the murder of 9 military officers in the Albrook Field and sentenced to 20 years in prison
November 1995	Juan Barria Jimenez, former PDF sergeant convicted of the murder of Raymond Dragseth and Fernando Brathwaite
November 1995	Cesar Augusto Roldan, former member of a PDF antiterrorist unit (UESAT) convicted of the illegal detention of Dragseth and Fernando Brathwaite
February 1997	Jorge Eliecer Bernal, former PDF captain and two other soldiers convicted of the murder of Manuel Lopez Vasquez
February 21 1997	Heraclides Sucre extradited from Peru
October 1997	Manuel Noriega ^{†*} convicted of murder of 9 military officers at Albrook Field and sentenced to 20 years in prison

Paraguay

Country Trial Years: (12) 1989-1999, 2001

Total Persons Convicted: 12

May 1992	Pastor Coronel, former chief of police investigations and three other police officials (Lucilo Benitez, Juan Aniceto Martínez and Camilo Almada Morel) convicted of aggravated homicide and torture of Mario Schaerer Prono and sentenced to 25 years in prison. General Francisco Britez Barges, former police chief, convicted of covering the crime and sentenced to 5 years in prison.
June 1993	Benito Guanes Serrano, former commander of the armed forces and head of military intelligence, convicted of the torture and kidnapping of Gustavo Inzaurre, Nelson Santana, Alejandro José Logoluso and Marta Landi and sentenced to 25 years in prison
November 1994	Pastor Coronel* convicted of the torture and death of Amilcar Maria Oviedo and sentenced to 25 years in prison. Sabino Montanaro, [†] former Minister of the Interior, Lucilo Benitez* and Agustin Belotto, former police official convicted and sentenced to 5 years in prison.
April 1995	Pastor Coronel* and Lucilo Benitez* convicted of the attempted murder and torture of Alberto Alegre Portillo and sentenced to 12 and 1/2 years in prison
June 1996	Pastor Coronel,* former chief of police investigations, convicted of abuse of authority, violation of domicile, torture and frustrated homicide, sentenced to nine and a half years in prison.
July 1997	Pastor Coronel,* Francisco Borges,* Camilo Almada Morel,* Lucilo Benítez Santacruz* and Martínez Amarilla convicted of misuse of authority, illegal deprivation of liberty, kidnapping, torture and attempted murder of Miguel Angel Soler
September 1999	Pastor Coronel,* Alberto Cantero Cañete, Camilo Almada Morel,* Lucilo Benítez,* Agustín Belotto Vouga,* and Juan Aniceto Martínez* convicted of the kidnapping, illegal deprivation of liberty, misuse of authority, torture, and homicide of Rodolfo and Benjamín Ramírez Villalba. Pastor Coronel sentenced to 25 years in prison and all others to 12 and 1/2 years.

December 1999	General Ramon Duarte Vega, former police chief, convicted of the attempted murder and torture of Sebastian Castillo, sentenced to over 13 years in prison
November 2001	Camillo Almada,* Alberto Cantero* and Sabino Montando convicted of the murder and torture of Octavio Ruben Gonzalez