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Truth And Reconciliation Commissions: The Road To Democracy And Rule Of Law?

Julie Ann Keil
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TRUTH AND RECONCILIATION COMMISSIONS: THE ROAD TO DEMOCRACY AND RULE OF LAW?

by

JULIE A. KEIL

DISSERTATION

Submitted to the Graduate School

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Approved by:

Advisor

Date

DEDICATION

This dissertation is dedicated to my colleagues at Saginaw Valley State University who have supported me through this long process, helping cover classes for me, listened to my woes and offered suggestions when badly needed. It is also dedicated to my high school student granddaughter, Trieu-Giang Le, who after listening to me talk about this dissertation for the past five years probably knows more about TRCs than most political scientists.

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Most importantly I would like to acknowledge Dr. Sharon Lean who inspired me to keep going and to finish this process and thought taking me to Liberia to study election monitoring would help the process.

PREFACE

Freedom under law is like the air we breathe. People take it for granted and are unaware of it--until they are deprived of it. What does the rule of law mean to us in everyday life? Let me quote the eloquent words of Burke: "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter; the rain may enter--but the King of England cannot enter; all his forces dare not cross the threshold of that ruined tenement!" But the rule of law does more than ensure freedom from high-handed action by rulers. It ensures justice between man and man however humble the one and however powerful the other. A man with five dollars in the bank can call to account the corporation with five billion dollars in assets--and the two will be heard as equals before the law (Dwight D. Eisenhower, Statement on the Observance of Law Day, 1958).

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ABBREVIATIONS

- African National Congress (ANC)
- African Peer Review Mechanism (APRM)
- American Colonization Society (ACS)
- Armed Forces Movement (MFA)
- Bertlesman Transformation Index (BTI)
- Cingranelli and Richards Index (CIRI)
- Congress for Democratic Change (CDC)
- Corruption Perception index (CPI)
- Democratic Movement of Mozambique (MDM)
- Disarmament, demobilization and reintegration (DDR)
- Economic Community of African States (ECOWAS)
- Front for the Liberation of Mozambique (*FRELIMO*).
- General Peace Agreement (GPA)
- Independent Human Rights Commission (IHRC)
- International Center for Transitional Justice (ICTJ)
- International Criminal Court (ICC)
- International Criminal Tribunal for Rwanda (ICTR)
- International Governmental Organizations (IGO)
- International Technical Advisory Committee (ITAC)
- Liberians United for Reconciliation and Democracy (LURD)
- Mozambique Democratic Movement (MDM)
- Mozambique National Resistance (RENAMO)
- Movement for Democracy in Liberia (MODEL)
- National Democratic Party of Liberia (NDPL)

National Electoral Commission (CNE)

Non-governmental organizations (NGOs)

Peace Research Institute of Oslo (PRIO)

Political Terror Scale (PTS)

Reconstruction National Integration System Survey (RNISS)

Revolutionary United Front (RUF)

Special Court-Sierra Leone (SC-SL)

Truth and Reconciliation Commissions (TRCs)

Union of Soviet Socialist Republics (USSR)

United Nations (UN)

United States Commission on Wartime Relocation and Internment of Civilians (CWRIC)

Unity Party (UP)

CHAPTER ONE: INTRODUCTION-THE PLACE OF TRUTH AND RECONCILIATION COMMISSIONS IN TRANSITIONAL JUSTICE

In the conflict-filled twentieth and twenty first centuries the problem of how states make the transition from war and human rights abuses to more stable political systems with political rights, civil liberties and human rights protections is a critical question. They are often hamstrung by the lack of governmental institutions capable of controlling the violence and providing civil liberties, political and human rights protections to citizens. In the past twenty years the concept of transitional justice, defined by Van de Merwe, Baxter and Chapman (2009) as “...societal responses to severe repression, societal violence, and systematic human rights violations that seek to establish the truth about the past, determine accountability, and offer some form of redress, at least of a symbolic nature” (1-2) has been increasingly used to explain how this transition can be accomplished. There are a variety of tools of transitional justice, including war crimes trials, amnesties, memorials, pardons and truth and reconciliation commissions, apologies, reparations, each employing different methods to achieve the same goal: transitional justice.

Assuming the effectiveness of such remedies, the choice of method of transitional justice is critical for states. The wrong choice will not only impede accountability and redress, and can sometimes result in the return to violence and human rights abuses. For example, in Sierra Leone in July of 1999 the provision for amnesty for all combatants in the bloody civil war and the attempt to make a violent rebel group, the Revolutionary United Front (RUF), into a political party, resulted in the renewal of the civil war and further violence (Peace Agreements Digital Collection, n.d.). The failure to provide transitional justice can also be as damaging to post-conflict states, leaving them unable to escape the effects of the conflict and move toward stability, peace, and rule of law.

This dissertation focuses on Truth and Reconciliation Commissions (TRCs) as a method of transitional justice and evaluates both the relationship between TRCs and democracy and more specifically their relationship to the establishment of the rule of law in post conflict states. The rule of

law is the specific focus because TRCs, with their emphasis on truth telling, reparations, disclosure of past human rights abuses and reconciliation can have a positive effect on the growth of rule of law in post conflict societies. There are outcomes other than democracy and the rule of law that are often tied to TRCs, such as peace and justice, both of which theoretically flow naturally from TRCs and are important considerations for post conflict states. However, the focus here is specifically on democracy and the rule of law because transitions to democracy include elements of both peace and justice; democratic states exercise the rule of law and build judicial capacity and democratic states are purportedly more likely to be peaceful toward other democracies. The efficacy of TRCs for the rule of law is also compared to another transitional justice method, amnesties, to empirically test these two methods of transitional justice to see which method is more likely achieve the rule of law. There is, of course, similarities between TRCs and amnesties and many TRCs encourage states to issue an amnesty. Because of these similarities, the combination of TRCs and amnesties are also tested to see if they are more effective than either method alone.

Transitional Justice and the evolution of Truth Commissions

Transitional justice, as defined by Van de Merwe above has been a concern internationally since the end of World War II and has had three main phases. The first phase consisted of the Nuremberg and Tokyo war crimes tribunals and various domestic and international war crimes trials, along with efforts to denazify Germany and demilitarize Japan (Mindzie, 2010, 114). These efforts largely ended by the mid-1950's as some convicted war criminals were released and the Cold War fight between the United States and the Union of Soviet Socialist Republics (USSR) took over in importance. The second phase occurred after the Cold War ended and states transitioning from Communism to some form of democracy tried a variety of methods of justice including release of secret files,¹ prosecution, lustration,

¹ The release of secret *Stasi* files by Germany.

memorials and TRCs. The third phase at the end of the twentieth century broadened and deepened transitional justice, with a new emphasis on ending impunity and making transitional justice an integral rather than optional part of a peace process (Mindzie, 2010, 114). This period is characterized by a variety of transitional justice methods, including the ad hoc war crimes tribunals for Rwanda, Yugoslavia, Sierra Leone and Cambodia, as well as the TRC in South Africa in 1995, the most publicized and influential TRC in the forty years of TRCs as well as a growing opposition to general amnesties.

Truth and reconciliation commissions came into existence after the first phase of transitional justice as an alternative to war crimes trials. Hayner (2011) notes that

Countries are confronting questions of justice and accountability in a wide range of political contexts, following the end of a military regime or repressive government, or after a civil war. It is now perfectly clear that there are many needs arising out of these circumstances that cannot be satisfied by action in the courts—even if the courts function well and there are no limits placed on prosecuting the wrongdoers, which is rare. Thus, complementary approaches to criminal justice have slowly taken shape (7-8).

The first generally acknowledged TRC occurred in Uganda in 1974 when then dictator Idi Amin created the Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971 to control public indignation over human rights abuses by his government (Truth Commission: Uganda 74, United States Institute of Peace, n.d.) . Olson, Payne, and Reiter record an earlier TRC in Pakistan in 1971 that was conducted regarding the events that led to the independence of East Pakistan (Olsen, Payne, & Reiter, 2010, 185). Over eighty TRCs, depending on the definition used, have occurred since these early efforts. Some have made genuine efforts to bring out the truth about events and reconcile the state, others like the 1974 Ugandan TRC were conducted to discover enemies of the state and to further repress detractors of Idi Amin’s regime (Truth Commission: Uganda 74, United States Institute of Peace, n.d.) They have occurred on all continents other than Antarctica, making them a global phenomenon rather than purely a Western or Latin American transitional justice method.

One of the complications in analyzing the impact of TRCs is that there have been a variety of definitions for TRCs since 1974 and not all bodies that fit the definition of a TRC are titled TRCs by their

organizers. In particular, commissions prior to the South African TRC in 1995 tended to be called commissions of inquiry or ad hoc commissions, rather than TRCs. However, since they served the same functions as TRCs it is necessary to use a clear definition of TRCs to create a comprehensive list for the purpose of comparative analysis. Hayner and Freeman have the most comprehensive definition of TRCs, defining them as commissions that are 1) temporary bodies, 2) officially sanctioned, authorized, or empowered, 3) non-judicial bodies,² 4) usually created at a point of political transition, 5) focus on the past, severe acts of repression and violence that were committed and over a period of time, 6) not just a single specific event, 7) generally complete their work with the submission of a final report that contains conclusions and recommendations, 8) focus on the broad causes and consequences of events, not just the facts, 9) focus on violations in the sponsoring state and occur in the sponsoring state, and 10) are victim centered bodies (Freeman and Hayner, 2002, Freeman, 2006, 14-19). The definition does not include amnesties but TRCs can, under this definition, choose to issue amnesties or not. This definition will be used in this dissertation which results in a somewhat different set of TRCs than some of the other studies, including one by Hayner. This definition is used in this dissertation because it creates a broad variety of similar institutions to be studied. For example, TRCs such as the South African TRC which offered amnesty for telling of the truth by perpetrators to establish the record of the events of apartheid are included in the definition along with TRCs that did not offer amnesty.

This definition differentiates TRCs from other commissions that are permanent, just fact finding, focused on a single incident, or unofficial commissions. A variety of other like commissions have also occurred, primarily human rights commissions conducted by non-governmental organizations (NGOs) for objectives that differ from official state objectives and do not have access to state resources or prerogatives such as investigative power, the ability to grant immunity or amnesty or the ability to act on recommendations (Freeman, 2006, 42). Because TRCs, by the definition used here, are officially

² Non-judicial means they do not determine guilt or innocence or punish perpetrators.

sanctioned they have the power and resources of the government to back them. They also often receive funding and support from international sources. Although NGO or IGO organized commissions may have some impact on democracy and the rule of law, their purposes and abilities are so different from state sanctioned or organized TRCs they will not be included. Single event TRCs will also be excluded because, while they are interesting and often help to heal society after traumatic events, they do not involve issues that are large enough to affect a comprehensive effect on democracy or the rule of law in a state. The selection of cases for this dissertation is explained more fully in Chapter Three.

Since 1974 the focus of TRCs has changed dramatically with less focus on justifying the actions of previous regimes and more on exposing the truth about the responsibility for conflicts and human rights abuses and providing for the reconciliation of society. They have become merged into the bigger field of transitional justice which had its start with the Nuremberg and Tokyo war crimes tribunals and the violent conflicts in the post-colonial world, driven by the necessity to devise a way to provide public justice for states trying to leave their repressive and violent pasts and move toward accountability for the past and some sort of redress. Transitional justice grew in popularity in the 1980's and includes methods of redress such as memorials to victims of conflicts, reparations for victims, amnesty and pardons for perpetrators, symbolic changes to anthems and flags, legislative reform (as in abolishing discriminatory practices) and war crimes tribunals. TRCs are a form of transitional justice because their truth seeking mission can develop accountability, while reconciliation can lead to reparations and an acceptance of the facts of what happened by society, however a poorly conducted TRC often leads to neither truth finding nor reconciliation. The Ugandan TRC in 1974 is a clear example of this-the result of the TRC was retribution against the TRC commissioners, no dissemination to the public of the truth discovered by the commission and no redress for victims or the public in general. Uganda went on to five more years of repression under Idi Amin and a succession of authoritarian rulers and civil conflicts

since then (usip.org/Uganda). A bad TRC that does not lead to the growth of democracy and rule of law can be worse than no transitional justice.

Because of examples like Uganda (1974), TRCs are often seen as, at best, either as a poor substitute for war crimes tribunals or an expensive alternative to prosecution or amnesties for perpetrators. On the positive side, they offer an alternative to the social disturbance and possible return to civil war that can result from prosecution of offenders. Millions of dollars and massive amounts of human effort and suffering have gone into TRCs and in many cases they have been relied upon as the primary or sole source of redress and reparation for victims. New TRCs have been proposed for conflict ridden states like Yemen, Sudan and Colombia, leaving the question of when TRC's become politically feasible and whether or not TRCs help states reconcile and move along the path to democracy and the rule of law critical as transitional justice moves forward.

TRCs Compared to Other Forms of Transitional Justice

There are other types of transitional justice that are often related to the growth of democracy and the rule of law. Because of Nuremberg and to a lesser extent Tokyo, Rwanda and Yugoslavia, war crimes tribunals are usually familiar to the general public, while other methods of transitional justice, such as TRCs are much less so. Unlike war crimes tribunals, a TRC is not an adjudicative entity empowered to find guilt or innocence. Instead of guilt or innocence, TRCs are commissioned to find out the truth about past events in a state which can sometimes lead to the naming of perpetrators, as occurred in the Liberian and South African TRCs, but prosecution of those people named is either avoided, postponed or deferred to an international or domestic court, rather than the TRC.

The most common other form of transitional justice is that of amnesties. Mallinder (2008) has created a database of amnesties worldwide that is among the most comprehensive and documents 506 amnesties from 1945 to 2008 (8). Olson, Payne, and Reiter in their Transitional Justice Database

document 676 amnesties from 1970 to 2008 (tjdbproject.com). Amnesties are often used in conjunction with TRCs but are the antithesis of war crimes trials because they prevent the prosecution of offenders, giving them amnesty instead either in return for information or in the interest of social order. Freeman (2009) argues they can also be problematic for TRCs since amnesties can interfere with reparations and the establishment of truth. However, he also argues that in some cases amnesties are not the antithesis of transitional justice but rather enable it. Citing the judgment of the Constitutional Court in Colombia in the case of *Gustavo Gallon y otros* from Colombia, Freeman says that:

Rather than be cast as the antithesis of transitional justice, amnesty becomes its enabler by potentially helping to pave the way at the national level for increased truth, reparation, and reform with respect to past violations, and for increased democracy, peace, and justice in the long term (19).

He notes that there is no certainty that amnesty will lead to this effect, just that it might. The South African TRC, with its extensive amnesty program, would be an example of this phenomenon. According to Freeman, the amnesty in South Africa was used as a trade-off in place of prosecution because it would aid the transition to democracy (15-16). He also agrees, however, that amnesties do not always have a positive effect, citing the four peace agreements that provided for amnesties in Angola's long civil war as an example of a case where amnesty did not lead to peace or justice (13).

Freeman identifies five phases in amnesties since the 1970's which coincide with critical phases in both amnesties and TRCs. In the 1970's the first phase for amnesty occurred when amnesty for political prisoners was felt to be necessary to mobilize public opinion in opposition to authoritarian regimes, as long as it was coupled with measures to resolve the underlying conflicts within the state (2). Amnesties became a popular form of transitional justice during this phase, but evolved as a form of transitional justice in the future phases. In the 1980's, the second phase of amnesty was generally linked to impunity and self-amnesty primarily by military dictatorships that used amnesty to escape from responsibility. The third phase occurred at the end of the Cold War and variety of issues regarding democratization led to the discrediting of amnesty efforts. The fourth phase began in 1993 with the

Vienna World Conference on Human Rights where there was recognition of the need to combat impunity for human rights abuses and coincided with the first war crimes trials after World War II being implemented in the former Yugoslavia and Rwanda (2-3).

The fifth phase is the modern day global fight against impunity for perpetrators of war crimes, crimes against humanity and genocide. This period has seen the establishment of the International Criminal Court (ICC) which militates against the use of amnesties by taking control of criminal prosecution out of the hands of the state and placing it in the hands of the international community. It has also seen the growing use of universal jurisdiction to prosecute war crimes and crimes against humanity, making amnesties of less value since they are not a defense against prosecution in a foreign court (2-3).

TRCs and Democracy and Rule of Law

There are four major reasons why the question regarding the connection between TRCs and the growth of democracy and the rule of law is important. First, much of the rationale is contained in the charters of the various TRCs; they contain language suggesting that one of the main purposes of the TRC is to build democratic institutions, find and publish the truth about conflicts, address impunity, create the rule of law and facilitate reconciliation in post conflict states. If the goal is to foster the growth of democracy it is critical that states choose the transitional justice tool most likely to bring about that growth; initial and or blanket amnesty is relatively unlikely to do so since it does not entail an institutionalized transparency process. Another rationale often used is the ability of TRCs to contribute to the building of judicial institutions and reduce violence in post-conflict states, increasing the rule of law. Unfortunately, the choice of transitional justice methods is often dictated less by the potential for success and more by the identity of the decision maker, with the international community preferring war crimes trials and TRCs , while national forces may prefer pardons and amnesties to encourage

people to forget and move on (UNDP, 2006, 6). States with limited funds may prefer less expensive tools such as amnesties and pardons and memorials, while severely conflict-torn states like Mozambique may prefer to avoid opening old wounds through trials and settle for forgetting (Cobban, 2007). What is often lost in this process of satisficing is the consideration of which tools are most likely to achieve successful or to maximize transitional justice. TRCs are often used to the exclusion of other forms of transitional justice and if they do not lead to the growth of democracy and the rule of law, then other forms should be utilized in their place.

Justice and the rule of law are crucial to any state and particularly to states in transition to democracy. Many have corrupt and failed justice systems which exacerbate tensions between ethnic groups and classes within society. As noted by Van der Marwe (2009)

The toughest test of a specific transitional justice mechanism's efficacy is not only how well it engages with past human rights violations but also how effectively it builds institutions, policies, and practices that will enable the embryonic democracy to deal with emerging and potential patterns of social conflict and violence (5).

The question of the effectiveness of TRCs in the building of the rule of law and judicial institutions and practices is a critical one because of the lost opportunity cost that can otherwise result. If TRCs are chosen in the place of another transitional justice method, and they do not lead to the desired outcome of increased democracy and rule of law, the opportunity to make a difference in the state is lost.

Second, there are a variety of costs for a TRC, some economic, some non-economic. There is a real economic cost to the nation utilizing a TRC and the choice of a TRC means a tradeoff of limited resources away from other pressing needs and to the TRC. Data regarding actual costs for TRCs are extremely difficult to obtain, particularly from the earliest TRCs but some is available. Justice in Perspective notes that the Liberian TRC (2006-2009) originally had a budget of fourteen million dollars which was later reduced to eight million dollars. Sierra Leone (2002-2004) budgeted four million five hundred thousand dollars for its TRC and South Africa (1995-2002), one of the larger TRCs, budgeted eighteen million dollars each year for two and one half years, plus a smaller ongoing budget for follow

up and reparations (justiceinperspective.org). Earlier TRCs such as Uganda (1986), Haiti (1995-1996) and Chad (1991-1992) had budgets between five hundred thousand and a million dollars, Chile (1990-1991) and El Salvador (1992-1993) had budgets of one million five hundred thousand dollars and Guatemala (1997-1999) had a budget of approximately five million dollars (Hayner, 2002, 285).

This cost seems high, and is compared with other post-conflict methods of transitional justice such as amnesties or memorials. They are, however, much less expensive than the other common method of transitional justice, that of war crimes tribunals. Cobban (2007) notes that each case at the International Criminal Tribunal for Rwanda (ICTR) costs approximately forty two million dollars while a case at a TRC cost approximately forty three hundred dollars, or one tenth of one percent of a war crimes case, making trials an expensive choice of transitional justice. She notes that a disarmament, demobilization and reintegration (DDR) procedure for a former combatant, which help former combatants make the transition to civilian life is substantially cheaper with a cost of approximately one thousand dollars and may be as effective (209).

Regardless of the actual amount spent, the money spent on a TRC is money that could have been spent on other pressing needs for post conflict states, such as infrastructure, training of the police and military and the establishment of justice systems and employment opportunities for citizens. It is always a question, of course, if money would be spent on these issues. Cobban (2007) notes that surveys of citizens of post-conflict states like Rwanda cite concerns for the economy, jobs and education, not justice or rule of law. She argues that choice of the more expensive options such as war crimes tribunals and TRCs needs to be weighed against the public concern with economic issues, making relatively inexpensive options such as TRCs a good choice (210).

Third, there can be also high non-economic costs for TRCs. Stable democracies like the United States (TRCs in 1980 and 2004) and Australia (TRC in 1996) were able to conduct a TRC with a minimal amount of social upheaval. The United States Commission on Wartime Relocation and Internment of

Civilians (CWRIC) which discussed the internment of Japanese Americans during World War II finished its report in 1984, shortly before the presidential election. It was finally signed by President Reagan in 1988 after bipartisan pressure was brought and no significant protests occurred (Maga, 1998, 617). The Australian TRC resulted in protests from indigenous leaders about land rights and some concerns from citizens and corporations regarding the loss of homes or commercial rights, but Australia and the United States were democracies according to Freedom House and Polity IV before the TRC and both continue to be one (Short, 2003, 507). There were also no changes in the rule of law in either country, although both TRCs involved questions of the use of the legal system to create or preserve unequal treatment of minority groups.

The situation of unstable democracies and autocratic states is quite different, with many experiencing political and social upheaval during and after TRCs. TRCs can themselves generate violence (Hayner, 2011, 196). In Liberia, in 2009, for example, death threats were made against TRC commissioners after their report was released and many recommendations, such as lustration of the current president, Ellen Johnson Sirleaf, could not be implemented due to political pressure (ictj.org).³ Other states such as Ecuador (1982-1984) and Zimbabwe (1985) did not release their final TRC reports due to concerns that violence could occur if the report was released (justiceinperspective.org). In the first TRC in Uganda (1974) the TRC resulted in political reprisals against all four commissioners and a report that was only released to the chief perpetrator, Idi Amin (usip.org).

Beyond these economic and non-economic costs, the personal cost to victims and their families from a TRC is impossible to calculate: it can help to bring closure, information about lost or killed family members and knowledge to the general public of the events of the conflict, but it can also reopen wounds and cause further trauma. Studies are mixed regarding the personal costs to victims and their families from TRCs but at best reminders about the events are painful.

³ It was later declared unconstitutional by the Liberian Supreme Court (netnewspublisher.com).

Lastly, there is a dearth of information regarding what is the best method of transitional justice and this choice of methods is critical for post-conflict states. The wrong choice can exacerbate tensions and increase the potential for future human rights abuses, conflicts and wars. The better choice can lead to the growth of democracy and rule of law. The problems caused by outside pressure and finances are made worse by the fact that little empirical study has been conducted of these various transitional justice tools. Van der Merwe (2009) notes that “While the conceptual literature on justice is still not well developed, the empirical literature is even sparser” (127). He argues that basic data, such as the number of perpetrators and offenses is hard to measure and that since so few offenders are charged in war crimes tribunals the statistics do not reflect an accurate picture of the delivery of justice (van der Merwe, 2009, 128). But, only limited study of the impact of these tools on the public and institutions have occurred, particularly for a tool such as a TRC.

There are, therefore, four reasons why we should study TRCs in a comparative and empirical manner. First, TRCs are often used to the exclusion of other forms of transitional justice. If TRCs or particular models of TRCs, do not lead to the growth of democracy then other forms could or should be utilized in their place. Second, there is a very real economic cost involved in conducting a TRC. If the result of a TRC is to strip a state further of resources and cause more human suffering in the remembrance of events, it should be for a good cause. Third, there are serious non-economic costs involved in conducting TRCs. History has shown that TRCs can, at least immediately after the process, cause more instability in a state, violence and personal costs to individuals in emotional and psychological stress. Fourth, there is a general lack of information on whether or not and under what conditions TRCs foster the growth of democracy. States have increasingly turned to TRCs since the 1990s, particularly since the South African TRC, without knowing if there is a clear connection between the goal of democracy and the transitional tool of a TRC.

In order to explore the potential relationship between TRCs and democracy and rule of law, data regarding TRCs, amnesties, types of conflict, conflict intensity and regional differences were analyzed through a quantitative analysis of all states experiencing conflicts from 1981 to 2010 with two dependent variables-- changing level of democracy and rule of law. Case studies of two states, Liberia and Mozambique were also utilized to see the interaction of these variables in greater depth in one state that conducted a TRC and an amnesty and one state that utilized only an amnesty. This dissertation consists of seven chapters. Chapter Two discusses the literature that exists regarding democracy, rule of law and amnesty with transitional justice. Chapter Three explains the cases included in the group of states that conducted TRCs as defined above and the group of states that had a conflict but did not conduct a TRC, as well as the methodology used in the quantitative study and the two case studies. Chapter Four explores the relationship between TRCs and democracy and the rule of law and compares TRCs to amnesty in their ability to make changes in rule of law along with the role of conflict intensity. Chapter Five is a case study of Liberia, exploring the history of its conflict and the effect of the TRC that was conducted from 2006 to 2009 on democracy and rule of law in that state, to the extent that we can gauge it in the relatively short time since the war ended. Chapter Six is a case study of Mozambique, exploring the history of the conflict and the effect of its general amnesty passed in 1992 on democracy and rule of law. Chapter Seven is the conclusion, drawing together findings from the quantitative chapter and the two case studies to the existing literature and making recommendations for further study.

CHAPTER TWO: TRANSITIONAL JUSTICE, DEMOCRACY AND THE RULE OF LAW: THE QUESTION OF CAUSALITY

Most of the existing literature that evaluates the impact of TRCs considers the relationship between TRCs and democracy. This literature review begins with discussion of transitional justice in general and how the TRCs fit into transitional justice. The relationship between democracy and TRCs will next be discussed, with the main dispute being whether TRCs lead to democracy or democracy leads to the choice of a TRC as a transitional justice method. Third, the relationship between TRCs and the rule of law will be considered. The chief dispute is whether TRCs, by not prosecuting offenders but providing for forgiveness, add to the atmosphere of impunity in post-conflict societies and impede rule of law or increase rule of law by offering an alternative to amnesty or war crimes tribunals. Another question in the literature concern the merit of TRCs as compared to amnesties and which is more or less likely to lead to the growth in rule of law. According to the literature, amnesties may be even more likely to lead to impunity than TRCs, but amnesties are nonetheless used by many post-conflict societies as a resolution to the conflict, making this question critical. War crimes trials are outside the scope of this study.

One of the emerging areas in the literature on TRCs is the effect of conflict intensity on the choices of transitional justice methods and the effectiveness of those methods in supporting the growth of democracy and the rule of law. Although conflict intensity has been examined in the context of the effect of the intensity on the resolution of a conflict, this dissertation is one of the first to examine the relationship between conflict intensity and democracy and rule of law. The level of intensity of a conflict, from a minor civil unrest with relatively few civilian deaths to a massive civil war like those in Liberia and Mozambique which cause hundreds of thousands of deaths, displacements of citizens and economic disaster, has an effect on peacemaking. Most literature on conflict intensity involves the impact of intensity on potential success in the peacemaking process. Transitional justice is often part of the peacemaking process and, at least arguably, can assist in making peace more durable. The emerging

literature on this issue primarily discusses the impact of conflict intensity of the choice of transitional justice method and the effectiveness of that measure. The small amount of literature regarding them will be discussed at the end of the literature review.

Transitional justice and the Place of TRCs

The first consideration is the role of TRCs in transitional justice. Theorists of transitional justice, including Lanegran and Graybill (2004) have made the case there are four main issues facing the future of transitional justice. First is whether a method of transitional justice provides real reconciliation or is just a political compromise. Second is whether there is a consistent set of goals for transitional justice. Third is the question of whether TRCs can heal and reconcile society or simply provide a panacea for the harms resulting from conflicts? And fourth concerns the ideal balance for transitional justice between TRCs and war crimes tribunals, considering the political goals of the domestic and international community toward efficiency as opposed to a focus on effectiveness (2).

The question of the role of TRCs in transitional justice is clearly seen in these four issues. One of the general criticisms of TRCs is their lack of connection to retribution, punishment or criminal prosecution of perpetrators. This criticism becomes more intense when a TRC is coupled with an amnesty such as the amnesty in South Africa, where perpetrators, who were not required to show remorse or ask for forgiveness, were granted amnesty in return for testifying about their actions. The perception was that the South African TRC, with its choice of amnesty, was a political compromise rather than a good form of transitional justice. Skaar (1999) argues that in fact the choice between TRCs and war crimes tribunals or other types of transitional justice is motivated by the balance of power within the state, not by necessity or the ability to aid in democratic transition. She argues that:

The government's choice of policy depends on the relative strength of demands from the public and the outgoing regime, the choice tending towards trials as the outgoing regime becomes weaker and towards nothing as the outgoing regime becomes stronger, with truth commissions

being the most likely outcome when the relative strength of the demands is roughly equal (1110).

States with a strong military that has not been disbanded after the conflict and have not given amnesty to military members are least likely to choose trials or TRCs since the chances of the military attempting a coup against the new government are too high. States where amnesties were used or the military was successfully neutralized tend to choose TRCs or war crimes tribunals. Skaar also points out that choices tend to change with time and that states are more likely to choose transitional justice methods such as TRCs after some movement toward democracy has been accomplished (1125).

Not all theorists see TRCs as useful in promoting transitional justice. In order to resolve these criticisms and to determine if TRCs can assist in democratic transition, it is necessary to study their effect on post-conflict societies. Unfortunately much of the literature tends to focus on the effects of TRCs on society and on individual victims and family members of victims of human rights abuses, not the effect of TRCs on the state. A variety of effects from TRCs have been mentioned in the literature, from psychological healing of individual victims, to reconciliation of ethnic or racial groups, to the establishment of rule of law and to the transition to democracy in post-conflict states. The most influential author on TRCs, Priscilla Hayner, notes that TRCs have many responsibilities beyond simple truth and reconciliation. According to Hayner (2011):

Truth commissions are typically tasked with some or all of the following goals: to discover, clarify and formally acknowledge past abuses; to address the needs of victims; to “counter impunity” and advance individual accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past (20).

Many of those tasks are related to the individual level; addressing the needs of the victims and advancing individual accountability work primarily at the individual level although TRCs make recommendations for restitution, psychological services and job programs for both victims of abuses and groups such as former child soldiers or even demobilized rebels.

This victim focus leaves open the equally important question of the relationship between TRCs and the state. Some of the tasks of a TRC relate to making changes in regimes, institutions and political culture to prevent the recurrence of conflicts. The discovery or clarification of past abuses may help individuals to obtain closure or vindication, but they are also designed to allow a new regime to reflect back on the errors of previous regimes and to chart a path forward (Hayner, 2011, 23). This can take the form of changes in the judicial system, police or the military to reduce human rights abuses, torture and disappearances and can lead to the development or support for the rule of law. It also often takes the form of the creation of democratic institutions to allow citizens to participate in the governance of their country through political, rather than violent means. In the literature there is a link to the impact of TRCs on the creation or consolidation of democracy and to the rule of law in post-conflict states but many of the scholars' findings are of mixed value due to the split focus between the state and the individual. Additionally, much of it is based on single or small case studies of a few TRCs, not larger studies of all TRCs. This leads to a selection bias with a few TRCs such as the South African one providing the bulk of information on TRCs. Despite this split, the literature does provide some guidance regarding the role of TRCs in healing states, not just individuals, after a conflict. The focus here will be on the literature regarding state because the impacts on individuals are unlikely to have a major effect on democracy or the rule of law.

The Role of TRCs in Improving Democracy

There are four main focuses in the literature regarding TRCs and democracy. The first concerns the issues of strength of a democracy and judges TRCs based primarily on procedural factors, such as whether they held public hearings, issued a public report, disseminated the report and made recommendations. The second concerns whether improvement in democracy is related to the conduct of a TRC. The third looks at whether the relationship is actually reversed, that the movement by a state

towards democracy causes a TRC. The last looks at the need for empirical research to answer many of the criticisms regarding TRCs. The literature is split between empiricists and theorists, with the theorists generally arguing there is a relationship between TRCs and democracy, while most empiricists argue there is no relationship.

Much of the early discussion regarding TRCs involves which TRCs are stronger. Hayner, who is the preeminent author in the area of TRCs, has devoted most of her work to this topic, classifying strong TRCs as those that complete their scheduled work, release a report and take steps toward implementing the recommendations of the commission. Hayner's (2011) five strongest TRCs, the ones South Africa, Peru, Timor-Leste, Morocco and Guatemala, all share these characteristics. They were also all TRCs that were created due to domestic, rather than international pressure, although the international community was present in Timor-Leste when the commission was created and the Guatemalan commission had two non-Guatemalan commissioners. Guatemala did not conduct public hearings, but Peru was the first Latin American TRC to conduct extensive public hearings and the others, including the Moroccan TRC, conducted public hearings that were broadcast domestically (27-44).

Hayner's concept of strength combines the concepts of international or domestic motivation and of procedural due process. However, she does not clearly define what is meant by strength or weakness. In particular, there is no effort to tie strength to democratic transition and, in fact, of her five cases of TRCs, Guatemala saw virtually no prosecutions for crimes and experienced a rapid growth in impunity and criminality (35), Peru elected a president in 2006 who was implicated in some of the worst abuses (39) and East Timor has continued to experience civil upheavals (42). Morocco at least paid reparations to victims in large amounts and fairly swiftly, but has not made any changes in its government to prevent future atrocities (44). Only South Africa seems to have made strides toward democratic change after the TRC and even South Africa has been a mixed success, with its refusal to implement recommendations regarding reforms and its continued practice of pardoning ANC and Pan-

African Congress members despite the refusal of the TRC to give them amnesty during its proceedings (31). This experience shows that a strong TRC may not necessarily be one that leads to democratic change. While they may have been strong enough to hold hearings and disseminate reports, they weren't strong enough to effect positive change within their states. The concept of the strong TRC implies that simply following correct procedure, having an acknowledgement and apology, a disseminated report and recommendations that are implemented is enough for success (Graybill and Lanegran, 2004, 3-4).

Most other authors including Minow (1998), Gairdner (1999), Teitel (2000), Freeman and Hayner (2003), Quinn (2003), Brahm (2007) and Graybill and Lanegran (2004) analyze the effects of TRCs on post conflict states connect them positively to the growth of democracy. Among the various rationales for TRCs are several that relate to democracy, including the building of institutions to promote democracy, such as an improved judicial system as well as the improvement in civil liberties that comes from confronting past abuses and violence and exposing the role of government in those abuses. For example, Brahm (2007) argues that TRCs do help with democratization because they often target three institutions that are often targeted for reform by TRCs: the military, police, the legal system and in particular the leadership of those institutions that are critical for democracy. The lack of transparency of and a strong judiciary allows impunity to grow and makes controlling imputing and corruption difficult to stop. There is a need to strengthen these institutions to increase horizontal accountability in states making transitions to democracy. According to Brahm:

...the crimes often occurred (or rather there were no sanctions for them) because the judiciary was not independent of other organs of government. Therefore, reforms strengthening the legal system are important. Commissioners also often note the need to dismiss the leadership of these institutions to make a break with the past. As a result, reforming these institutions and purging tainted leadership would go a long way toward building a more democratic system (24).

He notes that case studies of states utilizing a TRC show that reforms in institutions following a TRC such as a civilian check on the military or at least the retirement of former authoritarian leaders, followed by

increasingly democratic leadership, do occur (26). He argues, however, that existing studies do not demonstrate there is a causal link between TRCs and democratic institutions and that because TRCs are short term commissions and democratic change requires a long term and is subject to international and domestic pressure, a causal link may be difficult to establish (28-29).

Graybill and Lanegran (2004) also suggest that there is a connection between TRCs and democracy. According to them “Political leaders and legal theorists have argued that learning the truth about past human rights violations and punishing those responsible for them are prerequisites for the establishment of democracy and respect for the rule of law” (2). They reviewed specifically African TRCs and noted the possible connection between them and democracy, arguing that there has been “...’a paradigm shift’ in the means by which new leaders address their nations’ violent past” (2) and that the shift is to TRCs to promote democracy.

Minow (1998) also explores the relationship between democracy and TRCs, although her work is more generally focused on all transitional justice methods, not just TRCs. She points to twelve aspirations for TRCs including dignity for victims and creation of a record of abuses, but also the creation of institutions and justice systems that can lead to democracy and a respect for human rights. She argues that TRCs are actually not just a second best alternative to war crimes tribunals: because they can achieve a broader variety of goals that tribunals may actually be more effective than trials (88).

Brahm (2007) agrees with Hayner regarding the need for empirical testing and identifies at least part of the answer to the question of how TRCs contribute to democratization. He notes several potential phenomenon that occur in TRCs: 1) they contribute to the loss of authoritarian power and help to create democratic alternatives by identifying problems and recommending institutional changes that promote accountability and increase civilian control over the military (23), 2) they allow several divergent groups to be heard regarding their concerns, 3) they are often created as part of a general movement within a state away from authoritarian values and toward democratic values , 4) they assist

in the removal of enclaves of non-democratic power by naming names of perpetrators (or at least exposing their actions) (23), and 5) they contribute to stability and the growth of democracy by “(re)building a sense of shared destiny among groups giving them a stake in the ‘national project’ and through shaming perpetrators, thereby depriving them of ` that might otherwise encourage them to protect their interests through extra-constitutional means” (24). His analysis begins to explore the process by which TRCs can contribute to democratization.

So, whether there is a connection between TRCs and democracy is a key question. Authors such as Gutmann and Thompson (2004) in their book *Deliberative Democracy* make the connection between democracy and TRCs, arguing that the hearings of a TRC, by requiring both sides to explain their points and justify their views, and by requiring the commissioners to create and conduct hearings with aspects of democratic process such as an open and public process shows to the public their commitment to democracy and encourages the growth of democratic institutions (181).

The difficulty with many discussions of transitional justice and TRCs is that they are theoretical as opposed to empirical, looking at statements from TRCs and states about their goals and accomplishments and theorizing there is a connection to democratic transition. A few closely examine one or two TRCs to support their arguments, most often the South African TRC, but fail to look at a broad range of cases. As noted by Graybill and Lanegran (2004) scholars make assertions about what transitional justice programs do, but don’t test their assertions. They state that “Common wisdom asserts that truth commissions promote individual healing and reconciliation, which leads to national healing and reconciliation, which in turn provides a bedrock for democracy” (4).

There is a consensus among the major writers in the field of TRCs, including Hayner, Olsen, Payne, and Reiter and Wibelhaus-Brahm, that there is a need for empirical testing of this relationship and the question of causality. Hayner (2011) notes there are little quantitative data on the relationship between TRCs and democracy other than some anecdotal accounts and case studies of individual TRCs.

She also notes that “...studies are not directly assessing the impact in the specific areas that truth commissions usually define as their aims establishing truth, assisting victims, promoting justice, advancing reforms, and facilitating reconciliation...” (25), but rather they measure democratic change because, unlike these other aims, democratic change can be measured with current data and statistical methods, utilizing indexes of democracy such as Freedom House and Polity IV and can therefore be readily operationalized. This is the same methodology that is used here.

Recent authors such as Wiebelhaus-Brahm (2010) and Olsen, Payne, and Reiter (2010) focus on the relationship between TRCs and democracy. Both studies explore this topic extensively, with the Olsen, Payne, and Reiter also exploring the relationship to human rights. Like those studies, there is a disagreement in the literature as to whether or not there is a relationship between this variable and the independent variable, TRCs. A review of the literature shows there is some support for the argument that TRCs have a relationship to the growth of democracy in post conflict states but that the support is mixed and hard to compare since some of the support is based on single case studies.

Two recent studies, one by Olsen, Payne, and Reiter entitled *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* and the other by Wiebelhaus-Brahm entitled *Truth Commissions and Transitional States* both look at the connection between TRCs and democracy. The largest study, the Olsen, Payne, and Reiter (2010) study tests quantitatively the hypothesis that countries that utilize a TRC as opposed to other methods such as trials, amnesty or nothing experience an improvement in democracy as measured by Freedom House and Polity IV (136). Their study involves all known TRCs including those in democracies. Wiebelhaus-Brahm’s (2010) study focuses on the mechanism by which TRCs actually assist or fail to assist in democratic transition. In addition to a large quantitative study of over thirty TRCs, he also conducted in depth case studies of four states that conducted a TRC. Both studies find there is no relationship between TRCs and democracy or the relationship is negative.

The Olsen, Payne, and Reiter (2010) study views data from sixty different TRCs in fifty one countries and compare the relationship between trials, amnesties and TRCs and the growth of democracy in post conflict states. Their findings confirm Wiebelhaus-Brahm's findings discussed below, although they studied all transitional justice methods rather than just TRCs. Olsen, Payne, and Reiter's expectation was that conducting a TRC rather than a trial would allow a state to have the benefit of accountability, coupled with the avoidance of an authoritarian backlash from members of the former regime that often occurs when war crimes tribunals are chosen as the method of transitional justice (134). However, when they test the relationship between a variety of transitional justice methods, including TRCs and the growth of democracy using a multivariate regression analysis they conclude that states utilizing only TRCs experience a negative and significant impact on human rights and democracy (143-146).⁴

Olsen, Payne, and Reiter's findings are concerning for TRC advocates. They postulate that TRCs may fail to have a positive impact on democratic transition for a number of reasons, including that TRCs preserve a culture of impunity because offenders are not held criminally liable, may cause spoilers to reemerge or that the public becomes disenchanted with the state when it fails to meet the expectations that arose from the TRC and its report. But since not all TRCs are organized in a similar fashion and different forces come to play in the formation and conduct of TRCs, it remains a question as to whether some forms of TRCs are more related to democracy than others. For example, TRCs that do not issue a final report, do not conduct public hearings is less likely to assist in the growth of democracy because any effect on democracy is lessened by the lack of transparency for the TRC. Similarly, TRCs whose recommendations are not adopted by the state

Several authors, as noted above, have argued that some attributes of TRCs, such as transparency, domestic motivation, or international motivation may lead to more successful TRCs,

⁴ Their study broadly reviewed all transitional justice methods, including amnesties, trials, lustrations and reparations and concludes that combinations of transitional justice methods may lead to democracy.

assuming that success is defined as leading to the growth of democracy. This is particularly true in a case such as Liberia, where international involvement is encouraging a strong effort toward a transition to democracy. The United Nations has stationed forces in Liberia since the end of the civil war in 2003 in an effort to provide security in the region, but also to bring about the rule of law, improve the legal system and support democratic elections (unliberia.org). The UN points to the TRC in Liberia as an important component of this transition to democracy, so this is a good state to analyze to see if the international involvement, coupled with the TRC, has paved the way for a democratic transition in Liberia.

The other major study conducted by Wiebelhaus-Brahm's in 2010 focuses on the mechanism by which TRCs actually assist or fail to assist in democratic transition. In addition to a large quantitative study of over thirty TRCs he also conducted in depth case studies of four states that conducted a TRC. He concludes that although TRCs may not have made a large difference in democracy and human rights, there were some advantages in terms of purges and war crimes trials of some perpetrators. According to Wiebelhaus-Brahm

In sum, the four truth commission cases have had real impacts...some changes appear unlikely to have occurred without the truth commission as part of the transition. In other instances, while the changes may still have occurred, the truth commission shaped their timing, tone and form and thereby influenced how they were received (153).

He also argues that TRCs may not actually improve democracy within post-conflict states is because institutions that affect democracy are established prior to the TRC and are therefore not typically altered by TRC recommendations (146-147). Wiebelhaus-Brahm uses Freedom House data to measure democratic change because it offers data on both political rights and civil liberties (132).

In a 2007 article that predated his 2010 book, Wiebelhaus-Brahm reviewed the universe of TRCs and notes that many recommendations from TRC reports suggest improvements should be made in institutions to provide for more accountability in government to facilitate the transition to democracy.

According to Wiebelhaus-Brahm (2007) reports recommend increased civilian control of the military,

reforms in police and a stronger judicial system, particularly an independent judicial system. He also notes that reforming these institutions, along with the removal from office of past leaders would assist in the building of democracy within states and that following these recommendations should assist a state in making the transition to a democracy (25).

He argues that in practice, however, TRCs are not linked to democratization. Along with his general criticism of the methodology of the various studies finding the link, he has some substantive points of contention. One point concerns the lack of a relationship between TRCs and the construction of political systems after the cessation of a conflict. He notes that critical portions of the system such as electoral rules and constraints on the executive branch are typically accomplished before the TRC is conducted (Wiebelhaus-Brahm, 2007, 25). Although TRCs in many states are proposed during peace negotiations and before the first election, their hearings and recommendations occur after the first president or prime minister had been elected and often at the behest of this elected official. Therefore their impact on the creation and selection of these institutions would be minimal at best because TRCs are designed to be conducted outside of the traditional judicial process, not utilizing judges or attorneys for court personnel (Wiebelhaus-Brahm, 2007, 25-26).

Wiebelhaus-Brahm asserts that it is critical to analyze fully whether there is a causal link between TRCs and democratization. He argues that:

Using democracy as a means of assessment also has the benefit of providing clearly divergent outcomes should truth commission critics prove correct. For instance, if truth commissions are destabilizing, one would expect them to have a negative relationship with democracy. Perpetrators who feel threatened by the commission may take extra-constitutional steps to protect themselves and their interest. By contrast, should truth commissions in fact be weak and inconsequential, one would expect there to be no relationship between having engaged in truth-seeking and future prospects for democratization (26).

Wiebelhaus-Brahm feels a complete analysis of the relationship, or lack of a relationship, is critical to the continued use of TRCs. His concern, in particular, that they may be destabilizing is concerning and needs to be addressed.

This debate regarding the relationship between TRCs and democracy is a fairly new debate, with both of the major studies having been conducted in 2010. Because there is a dispute in the literature as to whether or not the relationship exists the first hypothesis in this dissertation relates to the argument discussed above and states: There is a positive relationship between a state having conducted a TRC and an increase in democracy.

Because there are so many aspects to democracy that may not be addressed by the use of a TRC, the focus of studies on transitional justice have turned to another concept, that of the rule of law. Rule of law has the advantage of being an aspect of democracy that is tied to directly to the focus of TRCs, the reduction of conflict by creating an atmosphere of impartiality and fair treatment for all people and particularly for victims of the human rights abuses by the state. This focus will be explored in the next section.

Rule of Law and TRCs

The rule of law acts as a constraint on the power of government and on the power of the majority against the minority by insuring all people are treated equally before the law. The rule of law is a subset of democracy, something that is required for a democracy to be fully consolidated. It is impossible to have a fully consolidated democracy in a state where the majority of the population still fears and distrusts the government, police and judiciary. This leaves transitional justice to find methods to rebuild trust by rebuilding the rule of law, insuring that all citizens are treating equally and fairly. Rule of law is a critical part of democracy where TRCs should be most expected to have an impact.

There are three main focuses in the literature regarding TRCs and rule of law. The first concerns whether states that were not democracies before their conflicts and have strong executive branches are able to make improvements in the rule of law. The second is whether TRCs promote the rule of law, and, if so, how do they promote it. In other words, what is it about TRCs that might lead to increased

levels of rule of law? The last looks at the need for empirical research to answer many of the criticisms regarding TRCs and the rule of law. The literature, like that of democracy, is split between empiricists and theorists, with the theorists generally arguing there is a relationship between TRCs and rule of law, while the only comprehensive empirical study, conducted by Olsen, Payne, and Reiter (2010) argues there is one, but it is negative (144).

Before addressing these focuses it is necessary to define rule of law. There are a variety of definitions of rule of law. According to Mani (1997) there are minimalist and maximalist definitions of the concept. The minimalist concept is that of a "...government that is subject to and operates within the law, and a situation where the individual is protected from the state" (148). This requires well known rules, a functioning judicial system and guarantees of certain freedoms. A maximalist definition "...embraces democracy and good governance on the one hand and human rights on the other. It establishes principles to constrain the power of government and it obliges the government to adhere to prescribed and publicly known rules" (148). Mani notes that this maximalist definition is not conducive with Western or common law judicial systems because of its belief in universal values. The most extreme maximalist position, one given by the International Commission of Jurists, extends the maximalist definition to include social and economic rights, which argues that the rule of law "...should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized" (148-149). Mani notes that human rights and the rule of law are often confused with each other, or use interchangeably but argues that they have different aspects and should be kept separate (149). A maximalist definition will be used here focusing on physical integrity rights, civil liberties, women's empowerment and independence of the judiciary.

According to Mani there are four elements to the rule of law—an independent judiciary, an efficient and functioning police and prison system and administrative law with open and public

procedures (153-154). She notes that context is also critical in establishing the rule of law, including “...the past, the political context, and the society and local culture” (154). Regarding the context, the one most obviously related to TRCs is that of the past. Justice cannot occur if there is not an operational justice system, public trust is needed to obtain public cooperation and support, and accountability shows that everyone is equal before the law and impunity will not be allowed (154-155). The past actions in each country dictate, to a large extent, how the past abuses are dealt with or were not dealt with.

Mani argues that transitional justice methods, if they are going to reinforce the rule of law, need to be within the country, be conducted in domestic institutions and not be internationalized (155). She notes that Mozambique chose no mechanisms to deal with the past other than amnesties, while Rwanda tried the whole gambit of methods (155). TRCs as defined in Chapter One meet these three criteria—they are always in the country, are conducted domestically and have limited amounts, if any, of international involvement other than funding.

Post-conflict states have tried a variety of transitional justice methods to create the rule of law and gain or regain trust in government, but primarily have utilized war crimes tribunals, amnesties and TRCs. The critical question is whether or not they lead to an increase in the rule of law, and if so, which method best fosters the growth. Because of their structure TRCs, may be contrary to the rule of law. Instead of enforcing the rule of law by prosecuting offenders of abuses, they may act as a vehicle to excuse them. On the other hand, many theorists argue that they create a sense of justice in situations where, because of the massive number of victims and offenders, prosecution is not a realistic possibility. This sense of justice is a necessary, although not sufficient, for the rule of law to grow. The literature on this topic, however, is primarily theoretical rather than empirical, showing the need for further empirical study of this crucial issue.

In some ways, the idea that a TRC, which does not adjudicate guilt or innocence or punish offenders, leads to justice is a challenging concept. But Dimitrijević argues that by presenting all of the evidence at a TRC without censoring or limiting the “truth” being discussed, a universal sense of morality and justice can be established. To him a TRC must do two things—clearly delineate the violations of the past regime and secondly, affirm the commitment of the new regime to adhering to values of justice, equality, dignity and concern for minority rights and interests (377).

The United Nations (UN) in its 2004 report by the Secretary-General on the rule of law in transitional justice notes that TRCs help build rule of law by raising awareness of abuses and providing methods for reform. They also noted that TRCs build institutional capacity by providing a safe environment for witnesses, victims and perpetrators to talk without fear. According to the UN “Such non-judicial mechanisms as truth commissions can play a significant role in enhancing accountability for human rights abuses. They can signal a break with the past and assist in engendering trust and confidence in newly reconstituted justice and security institutions” (unrol.org).

Dimitrijević (2006) also argues that dealing with the past in the concept of truth telling mechanisms such as a TRC is critical to improvement of the rule of law in post-conflict societies. He looks at the dichotomy often established by these societies between forgetting the past and getting on with life versus establishing the truth of the past and summoning up hard feelings and feelings of injustice. Looking at the mass human rights abuses of the twentieth century, such as Germany’s actions in World War II and Serbia’s actions in the Yugoslavian civil war, he argues that the actions of Germany and Serbia were:

... kind of "ethics of evil" leaves as its most troublesome legacy a political culture in which there are too many people who remain incapable of distinguishing between right and wrong, good and bad. Therefore, after crimes committed in the name of false ethical claims, transition into a state of civilized democratic peace cannot be achieved solely by means of the replacement of the governing elites and setting up of a new institutional framework. After a moral catastrophe, a clear, radically new moral foundation of the community is needed.” (371).

Simply forgetting and moving on will not allow a state to create this new moral foundation because replacing one set of ruling elites with a new set, or new institutions in place of old ones, will not change attitudes about the rights of all people to be treated equally and fairly. He argues that the role of TRCs should be less about their ability to bring about reconciliation or forgiveness and more about their ability to foster justice. One of the problems, he points out, with reconciliation and forgiveness is that they are more functions of individuals than of a state. No study of TRCs to date has been able to show categorically that reconciliation on the individual, family or group level has occurred. But the connection with justice can be shown and the relationship between truth and justice is a justification for the use of TRCs.

Not everyone believes that TRCs promote the growth of the rule of law. Olsen, Payne, and Reiter (2010) conducted a quantitative study of three transitional justice methods, trials, amnesties and TRCs from 1970 to 2007 in all countries in the world. In reviewing the three forms, they argue that trials are equivalent to a maximalist approach form of accountability, one that is most likely reduce violence, strengthen judicial institutions and rule of law and lead to democracy. The maximalist approach rejects both amnesties and TRCs because they increase impunity by failing to build respect for the rule of law and allow perpetrators to escape without punishment (16-19). They argue that amnesties are part of a minimalist approach, one that emphasizes the need for transition and postulates that any form of retributive justice, particularly trials, can interfere with transition. Amnesties also, according to Olsen, Payne, and Reiter (2010) are a way to recognize the reality that trials cannot try all perpetrators and are therefore unlikely to build the rule of law since trials also allow most perpetrators to escape from justice and others to be acquitted, increasing, rather than decreasing the feeling of impunity (19-20). They use an index for human rights known as the Cingranelli and Richards Index (CIRI) and the Political Terror Scale (PTS), an index that is also part of the CIRI index (42).

However, the connection between TRCs and the growth of the rule of law is not necessarily clear. Authors such as Allen (1999) argue that although TRCs are thought to spur the rule of law by breaking with the past of human rights abuses and impunity, they actually lack the due process rights of criminal trials and the ability to punish human rights violations. This can, instead of encouraging the rule of law, lead to a lack of accountability and impunity. He notes that this concern is exacerbated when a TRC is simply a substitute for any type of criminal prosecution or is done in private, rather than with public hearings and reports of its activities (319). According to Allen, some of this conflict is inherent in the role that TRCs play in simultaneously promoting both justice and reconciliation, different concepts that have different effects (320). According to Allen:

...sensitivity to injustice can perhaps be restored over time by confronting the specific circumstances of injustice. This is one of the reasons that the role of the TRC in producing a detailed record of suffering and of perpetrator's statements is so significant. Reflection on past injustices is an important basis for a democracy that aims to respect justice and the rule of law...although memory of past injustices does not necessarily enhance a sensitivity to the injustices borne by others, reflecting on the conceptual and psychological import of the evils involved in specific cases may alert us to the presence and likely effect of injustices (337).

Allen postulates that TRCs can support the growth the rule of law bringing past injustices out in the open, making society sensitive to injustice, rather than accepting of it. Support for the rule of law can only function when society values individual rights to equal treatment under the law, something that can be supported the educational functions of TRC public hearings and reports (337).

Orentlicher (1991), is another critic of TRCs and the rule of law. She argues that the failure to prosecute major crimes not only may violate international law, but that "Societies recently scourged by lawlessness need look no farther than their own past to discover the costs of impunity. Their history provides sobering cause to believe, with William Pitt, that tyranny begins where law ends" (2542). The failure to prosecute offenders results in a society that does not trust the judicial system because other methods of transitional justice, including TRCs and amnesties deliver the wrong message, that of no consequences for crime on a massive scale. To Orentlicher, "A complete failure of enforcement vitiates

the authority of law itself, sapping its power to deter proscribed conduct” (2542). While prosecution of all offenses may not be necessary, the failure to prosecute the worst offenses provides a justification for the lack of trust by the citizenry and a lack of concern for the consequences of their actions by the police, judiciary and military.

Stanley (2001) also addresses the issue of the rule of law and its relationship to TRCs. She argues that although the South African TRC incorporated three mandates 1) acknowledgment of past suffering, 2) promotion of future based on social justice and 3) the rule of law and reconciliation, it didn't result in social transformation due to lack of will to do the necessary procedures and follow the recommendations of the TRC. In particular she notes that the failures to prosecute perpetrators who either failed to request amnesty or were denied amnesty both victims and perpetrators were shown that the rule of law would not prevail in South Africa. She notes that even after the TRC Johannesburg is the most dangerous city in the world, but because of criminal violence, not political violence. However, Stanley argues “...the political violence of the past and the criminal violence of the present are ‘two sides of the same coin’; current criminal violence cannot be historically decontextualized from the past struggles against apartheid” (535). The basic tenets of apartheid were not eliminated and the inequalities from it still persist in South Africa, leading to the current levels of criminal violence. Former military, police and government officials and workers who were complicit in the abuses of apartheid continued in office, showing impunity and instilling a lack of trust in victims in particular and in the state. Stanley states “The continued impunity and lack of justice makes it increasingly difficult for people, already mistrustful of state personnel, to cooperate in building a new society based on the rule of law (Simpson 1998)” (536).

Stanley, however, does not completely discount a relationship between TRCs and the rule of law. She points out a link: most TRCs include some discussion of reparations for victims in their

mandates and in their final recommendations.⁵ According to Stanley “While reparations promised a ‘substantial impact’ on victim’s lives, progressive policies based on social justice could bring a sense of fairness and equality to a society based on socio-economic discrimination” (537). A sense of justice and equality is a critical element of the rule of law, so in that way TRCs can contribute to the rule of law.

The last major conflict is the difference between theorists and empiricists regarding the connection between TRCs and the rule of law. There is only one major empirical study on this topic which was conducted in 2010 by Olsen Payne and Reiter; the rest are one or two country case studies.⁶ They used a moderate approach to transitional justice and found that TRCs can restore faith in the justice system, a necessary component of the rule of law, by providing restorative justice through recommendations for financial reparations or symbolic reparations. According to them, the public exposure of perpetrators through the TRC process allows them to be held up to scrutiny but does not risk the political upheaval that is commensurate with war crimes trials (24). Their empirical findings, however, are that there is a negative, not positive relationship between TRCs and human rights, defined similarly to rule of law, as well as with democracy. They also note that no other transitional justice methods have a negative relationship. They provide no explanation for this negative relationship other than that it may be related to a general disappointment by both the public and perpetrators that they provide neither justice nor amnesty from prosecution (144-146). This is an area that needs further empirical study to confirm or disprove their results. Because there is a need for more empirical study of this relationship the fourth hypothesis for this dissertation will examine this relationship. The fourth hypothesis states that there is a positive relationship between a state having conducted a TRC and an increase in rule of law.

⁵ Sierra Leone, Bolivia, Liberia, South Africa, United States (Japanese Internment), Guatemala and El Salvador, among others.

⁶ See for example Kaye, M. (Oct., 1997). “The Role of Truth Commissions in the Search for Justice, Reconciliation and Democratisation: The Salvadorean and Honduran Cases”, *Journal of Latin American Studies*, 29(3), 693-716 and Gibson, J. (Jul., 2002). “Truth, Justice and Reconciliation: Judging the Fairness of Amnesty in South Africa”, *American Journal of Political Science*, 46(3), 540-556.

As was discussed briefly above, war crimes trials and TRCs have not been the only methods of transitional justice used by states or analyzed by scholars. Amnesties are often discussed as an alternative to TRCs and are at the other end of the spectrum from war crimes trials. Because amnesties may have the advantage of not opening old wounds by trying violators or uncovering the truth regarding conflicts, amnesties are often attractive to states willing to adopt the “forgive and forget” method of transition. Below is a discussion of the literature regarding amnesty as an alternative to other transitional justice methods.

Amnesties and Their Role in Transitional Justice

If the lack of punishment or reproach destroys the foundations of justice, amnesty would appear to be contrary to the goals of justice. The word amnesty comes from the Greek word *amnestie*, meaning oblivion or forgetting (dictionary.com). Amnesty is often thought of as a minimal form of transitional justice, one that provides for the least amount of political strife in a transition. Because trials or even TRCs can cause political unrest and make it difficult for members of the former regime to retire or move on, problems from the former regime continue to pose a threat to the new government. Amnesty allows society to move on and removes the possibility of reprisals by former members of the military, rebel groups or government who might otherwise feel compelled to defend themselves against prosecution by a continuation of military action.

Although, as discussed in Chapter One, Freeman (2009) notes, we may be in the “fifth stage” of amnesties, with its opposition to amnesties due to the modern day global fight against impunity for perpetrators of war crimes, crimes against humanity and genocide, they are still used by states on a regular basis around the world (3). In some cases, such as South Africa, TRCs may actually aid a TRC by encouraging the full disclosure of atrocities in return for amnesty of prosecution, establishing a clear and truthful record. In other cases, amnesties, particularly general amnesties given without any

requirements of confession of guilt or provision of information, may defeat any positive efforts of a TRC by failing to provide incentives for information, or at worse encouraging impunity.

Another difficulty in using amnesties as a form of transitional justice is noted by Freeman. Mallinder (2008) in her extensive study of amnesty documented hundreds of amnesties that occurred in the latter half of the twentieth century (18-22). Many of those amnesties were granted in the place of prosecution or a TRC, such as occurred in Mozambique, but many, particularly *de facto* amnesties occurred in states also utilizing a TRC.⁷ Freeman argues that the choice of amnesties or TRCs for states trying to resolve conflict depends less on the value of amnesty than it does on the power structure at the time the decision is made. He notes that

Where human rights violators are too weak to derail the strengthening of the rule of law, they can be put on trial. But where they have the ability to lash out in renewed violations to try to reinforce their power, the international community faces a hard choice: either commit the resources to contain the backlash or offer the potential spoilers a deal that will leave them weak but secure (104-105).

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The problem with the choice is that states often discount the difficulty in setting aside amnesties, making it a permanent choice. There tends to be an overestimation of the ability to set aside amnesties and an underestimation of how entrenched they are; most perpetrators will take the chance and states may offer them, thinking they are a short term fix that can be remedied later, but in fact most amnesties in the last 50 years are still in place and few are overturned by national legislatures or court

⁷ South Africa and Liberia are examples of this-amnesty was given in both states despite a TRC being conducted.

(Roht-Arriaza and Gibson, 1998, 843). Contestation of an amnesty could take years and most attempts, such as the one by the family of Steven Biko through its challenge in the case of AZAPO v. President of the Republic of South Africa failed to have it set aside.⁸ The court in that case declared the amnesties constitutional and stated that amnesty was necessary for the state to be able to reveal the truth of the activities during apartheid. According to the judge:

The alternative to the grant of immunity from criminal prosecution of offenders is to keep intact the abstract right to such a prosecution for particular persons without the evidence to sustain the prosecution successfully, to continue to keep the dependants of such victims in many cases substantially ignorant about what precisely happened to their loved ones, to leave their yearning for the truth effectively unassuaged, to perpetuate their legitimate sense of resentment and grief and correspondingly to allow the culprits of such deeds to remain perhaps physically free but inhibited in their capacity to become active, full and creative members of the new order by a menacing combination of confused fear, guilt, uncertainty and sometimes even trepidation. (CCT 17/96 (July 1996))

The judge also noted that amnesty was necessary for the peace process and that without it the transition from apartheid would not have occurred, a sort of balancing act of the rights of the individual versus the rights of the state (18-19).

As noted by Freeman, types of amnesties have changed over time. Blanket amnesties are utilized less by modern states but amnesties are still included in cease fire and peace agreements and used to negotiate the departure of elites from the previous regime. There are several kinds of amnesties: general amnesties giving amnesty to all members of a particular group (such as child soldiers or minor members of the military), conditional amnesties which grant amnesty only if conditions such as testimony at a TRC are satisfied by the applicant and limited amnesties which usually only apply to lesser figures in a conflict such as enlisted soldiers, minor figures or applicants for amnesty accused of relatively minor crimes.

⁸ Steven Biko was a black anti-apartheid leader in South Africa in the 1970's who was arrested by police in 1977 and died while in police custody under suspicious circumstances.

Freeman argues that amnesties are often cited as the lesser of two evils, the least bad solution of many bad solutions and points to the experiences of Somalia and Burma as examples. According to Freeman:

This lesser-evil argument is more than mere philosophy. One can measure it in real lives and in pain. Even a temporary lull in the fighting can be characterized legitimately, and experienced directly, as a huge gain. The grim reality of many pretransitional justice settings, such as modern-day Somalia and Burma, is that there are no good options to choose from, only bad and worse ones. Such options are mostly a function of the reigning balance of power at a particular period in time. Where that balance of power is particularly unfavorable to the cause of justice, arguments focused only on the legality of proposed amnesty can seem remote, even indifferent to human suffering. It is not surprising, therefore, for societies in such circumstances to 'act on a prudent logic of consequences rather than a narrow logic of legal appropriateness' (23-24).

Justice may be better served through amnesty and putting an end to conflicts and suffering rather than a continuation of the conflict.

There are other advantages to amnesty over trials or TRCs according to Freeman. Many trials of war crimes or human rights abuses are conducted under international auspices and at least trials are often conducted in other countries, excluding people and groups to the political processes. Trials can also lead to the destruction or hiding of evidence, making discovery of the truth regarding events even most difficult to uncover (24). Acquittals can happen in trials, increasing the belief in impunity for offenders and TRC proceedings can be stymied by concerns about prosecution such as occurred in Sierra Leone when many involved in the conflict refused to testify at the TRC out of fear of having their statements used against them in the Special Court for Sierra Leone (Evenson, Apr., 2004, 755).

Freeman also considered the various studies on amnesties and democratic consolidation and argues that amnesties shouldn't be divided into amnesties on all offenses versus just minor, not genocide, war crimes and crimes against humanity amnesties, or limited amnesties. If amnesties are bad, then simply because they are limited doesn't make them automatically acceptable or good. He points out that the South African conditional amnesty did not exclude acts in violation of international law such as crimes against humanity and therefore could be considered bad, but should in fact be

considered better than amnesties such as the ones in Macedonia which did exclude violations of international law but did not require individual accountability for amnesty applicants (25).

Lastly, Freeman argues that many of the studies that show amnesties lead to instability are flawed to one extent or the other. In many of them, other methods were employed at the same time as amnesties, making a mixture of transitional justice methods that is hard to disaggregate. He also argues there are selection biases in the choice of cases and in the perceptions of state conditions post-amnesty. He points to Spain and Mozambique as countries that utilized only amnesty after conflicts and that while they have not become paragons of stability certainly did not descend back into violence and civil war and in fact have made movement toward democracy after the use of amnesty (27).

Like Freeman, Snyder and Vinjamuri (2003) also argue for the importance of amnesties in some situations, including in El Salvador and South Africa, particularly when coupled with TRCs. They conducted a study of thirty-two countries between 1989 and 2003 that had experienced a civil war and conclude that amnesties are more likely to lead to long, stable peace agreements than TRCs or trials. They argue that justice does start with the creation of rules and laws. Instead, it begins with striking bargains that diffuse groups that may make a peaceful transition impossible after a conflict

Preventing atrocities and enhancing respect for the law will frequently depend on striking politically expedient bargains that create effective political coalitions to contain the power of potential perpetrators of abuses (or so-called spoilers). Amnesty-or simply ignoring past abuses-may be a necessary tool in this bargaining. Once such deals are struck, institutions based on the rule of law become more feasible. Attempting to implement universal standards of criminal justice in the absence of these political and institutional preconditions risks weakening norms of justice by revealing their ineffectiveness and hindering necessary political bargaining (6).

They contend that only after bargains are struck and the situation is stabilized can states begin to develop institutions to promote the rule of law. Making changes in societal norms will not create an atmosphere of acceptance of human rights and peace because changes in normative thinking cannot happen through persuasion and examples. They point out that although most people in third world countries agree that genocide and human rights abuses are wrong, the people answering this way are

not the primarily the people who were the perpetrators of criminal acts during the conflict. While the majority of people in a country may agree to a set of norms, the people being committed to the cause are less likely to embrace norms regarding war crimes and are more likely to ignore attempts to change their behavior (11). They also argue that trials are not a deterrent to future abuses since the chances of being tried for those abuses are so small and unpredictable and because perpetrators of mass abuses often are necessary actors in peacemaking during civil wars, making deterrence less vital in the international system than in domestic criminal law. It requires neutralizing potential spoilers, having a functioning judicial system and a commitment to justice by society, difficult requirements for societies emerging from conflicts (12).

Snyder and Vinjamuri (2003) argue that amnesty is a legitimate tool for transitional justice if it leads to the establishment or improvement in the rule of law. They note that if there is no clear connection between a prosecution and rule of law and the strengthening of impartial, law-abiding institutions, prosecutions should not be used. Prosecutions in circumstances where there are weak institutions and potential spoilers still strong, the chances of a return to violence and civil war are too great to allow for prosecution n (14-15). In the absence of a decisive military victory, such as the allied victory over the Nazis at the end of World War II amnesty, a *de facto* amnesty by doing nothing is a better choice (18). They also argue that TRCs only lead to democratic consolidation when there is already a movement toward democracy and the rule of law before the TRC occurs. Absent this movement TRCs can actually exacerbate tensions and obscure further abuses by regimes, further destabilizing them and leading to more violence (20).

The no-amnesty school is based primarily on two arguments-violation of universal values and norms and violation of international law. There are several arguments regarding the violation of universal values, including the existence of a moral obligation to victims and their families, of a need to renew trust in the government and the judicial system, and of a political obligation to bring about the

rule of and the end of violence and vigilante justice. Much of the discussion of these obligations is espoused by victims' groups and victims' advocacy groups, such as Human Rights Watch, but several scholars have also made moral arguments against amnesty. For example, Moore (1990-1991) argues that amnesty is often used for political reasons rather than to bring about the reconciliation of society. She notes that in Nicaragua and El Salvador amnesties were used for political reasons by new regimes but were sold to the people with the promise that amnesty would allow them to forget the violence of the past and to move on to a new and better society. She argues that instead of allowing society to move forward, it actually inhibited the creation of the rule of law. She notes that

Overlooking the past is incompatible with any society that purports to follow the rule of law. Law derives legitimacy from past events, inherits problems from the past and strives to fulfill past promises. When a law is reversed, through appellate review or legislative repeal, it should be done through formal recognition of past error or changed circumstances. When prisoners are released, or criminal investigations are closed, the law requires some explanation. Simply forgetting past offenses, or distorting the criminal record to suit a political strategy, manipulates history in ways that obscure the accounting required by the rule of law (773).

By offering amnesties for one reason but using them for another, both states acted immorally to the victims and their families, violating their rights. Beyond that specific case, Moore says more generally that amnesty that is done to appease a violator simply encourages, rather than discourages more abuses (733). So not only does it betray the victim, it encourages the abuser.

Lastly, there is a belief that if some of the more egregious crimes are forgiven and excused, rather than punished, then that would change the public trust in the government and undermine the growth of the rule of law. This point of view is primarily espoused by victims' groups and victims' advocacy groups, such as Human Rights Watch. For example, Human Rights Watch decried the National Stability and Reconciliation Act in Afghanistan which offered Taliban fighters immunity from prosecution if they agreed to reconcile with the government, arguing that the amnesty was an open invitation for future war crimes by the Taliban and allowed commanders to escape with impunity. The fact the Act was signed by the Afghani parliament without protest by the international community led to their

conclusion that the international community and the government of Afghanistan were encouraging impunity (Human Rights Watch-Afghanistan).

The argument that amnesties do not bring about the end of violence and vigilante justice is made by several authors, including Akhavan (1998) and Bass (1998) who discuss amnesties in the context of the former Yugoslavia. Akhavan argues that the failure to settle for amnesties in the former Yugoslavia and the decision to prosecute brought peace to Yugoslavia rather than the turmoil and deaths predicted by opponents of war crimes trials. He argues that, contrary to most opinions, the possibility of arrest and conviction for war crimes for major actors in the war reduced the possibility of continued opposition to peace rather than encouraging further violence. According to Akhavan, peace did not become problematic because of the refusal to grant amnesty, but rather when it became obvious that the international community would not take action to arrest perpetrators, encouraging further feelings of impunity (739).

Bass (2008), on the other hand, is more pragmatic in his arguments regarding amnesty. He notes that authors such as Huntington argue that without amnesty virtually all transitions in the twentieth century from authoritarianism to democracy would not have occurred; without neutralizing former leaders by offering amnesty, they would continue to fight or interfere with the transition of the state. He argues, instead, that although perpetrators can create problems for the new state without amnesty, victims can make problems for the new state if amnesties are granted. Victims will be highly dissatisfied with seeing perpetrators walk free after conflicts and are unlikely to trust the new state or justice systems. He cites the situation in Iraq where *Shia* victims of the Hussein regime were surveyed and commented that if Hussein were not tried as a war criminal they would take justice into their own hands. 98% of the Iraqis surveyed felt there should be some form of a trial and punishment. While an amnesty may neutralize former elites, it invigorates opposition from victims and other citizens, also making a transition to democracy and the rule of law difficult (Chapter 13). Because of this, he argues

amnesties are a mistake for a state after a conflict because the possible benefit of neutralizing perpetrators is outweighed by the impact of victims.

The most frequent type of transitional justice in states after a conflict is an amnesty. Amnesties are used In order to compare the ability of TRCs and amnesties to promote democracy and rule of law, two hypotheses are included in this dissertation. Hypothesis Two relates to the ability of TRCs to improve democracy as compared to amnesties and states that there is a greater change in democracy in post conflict states that utilized a TRC as opposed to amnesties. Hypothesis Four compares TRCs and amnesties and their ability to improve rule of law and states that there is a greater change in rule of law in post conflict states that utilized a TRC as opposed to amnesties. The question of amnesties is also reviewed in the two case studies of Liberia and Mozambique to show the effect of an amnesty as opposed to a TRC.

The Effect of Conflict Intensity

There is very little in the literature that discusses the intensity of the conflict and its effect on transitional justice. This section will discuss the small amount of existing literature on conflict intensity, most of which is related to peace building and choice of transitional justice methods, rather than directly to the objects of this study. However, since it is relevant to the success in improvement in democracy and rule of law in post conflict states, the discussion is helpful in understanding the importance of this variable. This section briefly reviews the literature that argues that conflict intensity can affect democracy and rule of law.

The severity of the conflict was considered by Olsen, Payne, and Reiter (2010) who noted that not only could the severity of the conflict determine the methods of transitional justice that might be used by a state, it might also result in the mobilization of domestic and international groups to demand accountability. They note that the severity of a conflict could influence the choice of transitional justice method because an intense conflict is less likely to be ignored and can force the adoption of transitional

justice. They conclude that the severity of the battle actually results in the choice of amnesties and TRCs, rather than trials, indicating that when the conflicts are most severe the choice is to avoid accountability out of fear of the return of the conflict (126). Wiebelhaus-Brahm (2010) does not look at conflict intensity in his model.

There is discussion from other authors of the effect of intense conflicts on peace building after a conflict rather than specifically democracy and rule of law, however since transitional justice methods have an effect on ability of states to heal and rebuild after a conflict, it follows that conflict intensity is relevant to the ability of a transitional justice method like a TRC or an amnesty to lead to democracy or the rule of law.

Lounsbery and Pearson (2009) discuss conflict intensity extensively in relation to the resolution of civil wars and note that low intensity conflicts fought over a long period of time result in more successfully negotiated peace than conflicts that involve intense fighting. This is logical since these low intensity wars tend to be fought over issues other than ethnic identity and wars that tend to end due to a lack of commitment to further fighting rather than victory by one side (161). This is consistent with the argument that an intense conflict will have less success with improving the rule of law after a conflict because there will be greater challenges to peace. It may be that states with long, low intensity conflicts may also be more likely to reap democratic benefits of a TRC, but this remains to be studied.

Hartzell, Hoddie, and Rothchild's (2001) work is consistent with Lounsbery and Pearson. They note that intense conflicts are likely to result in the reoccurrence of war. According to them, states that have recently used violence to control issues between groups find it difficult to return to peaceful relations after a conflict and will experience ongoing concerns regarding security. They argue that the settlement environment affects the prospects for continued peace because there will be greater feelings of insecurity, memories and costs involved in the conflict that are hard to overcome for all sides. They state that:

It appears that states that have experienced civil wars with a relatively higher number of battle deaths in each month of war, as reflected in our intensity variable, have a greater risk of their negotiated settlement failing than states that have emerged from less intense domestic wars. ...We hypothesize that the importance of this variable is attributable to security concerns. The higher the casualty rate, and the greater the sunk costs, the more concerned groups will be about their safety; as a result, they will have more difficulty committing to a stable peace (198).

Hoddie and Hartzell (2005), also in the context of peace building after a conflict, note that more intense conflicts make the likelihood of holding a transition election less likely because cooperation is less likely and both sides are likely to overreact to any stress by fearing the return to the original conflict. Their study found that intense conflicts were not related to timely transition elections, meaning that having an intense conflict has a negative effect on the timing of a post conflict election. Since elections are an integral part of democracy and can have an effect on rule of law this finding supports the concept that intense conflicts can be problematic for democracy and rule of law (100-101).

TRCs may ease this transition for states that have had intense conflicts by providing a vehicle to allow cooperation to occur, making elections more likely to occur sooner than in states that did not conduct a TRC. The last two hypotheses relate to the question of conflict intensity and its effect on democracy. According to Hypothesis Three states that experience intense conflicts with cumulative battle deaths in excess of one thousand and conduct a TRC experience higher democracy scores than states with intense conflicts who do not conduct a TRC while Hypothesis Six states that experience intense conflicts with cumulative battle deaths in excess of one thousand and conduct a TRC experience higher democracy scores than states with intense conflicts who do not conduct a TRC.

The next chapter will look at the selection of cases for this dissertation and the methodology to be used in testing the relationship between democracy and rule of law and TRCs and amnesties. An operational definition for TRCs will be discussed and the methods for measuring the two dependent variables, democracy and rule of law will be set out along with the two statistical tests used to analyze the six hypotheses discussed above.

CHAPTER THREE: DATA AND METHODOLOGY

This dissertation compares the experience with democracy and rule of law of thirty six non-democratic states that held a total of forty Truth and Reconciliation Commissions (TRCs) from 1981 to 2010 to a group of fifty states that experienced a total of sixty three internal armed conflicts and did not conduct a TRC, although many did issue amnesties. Both of the main empirical studies by Olsen, Payne, and Reiter (2010) and Wiebelhaus-Brahm (2010) discussed in Chapter Two compared the states conducting TRCs to all states with populations in excess of one million citizens, rather than states that experienced an armed conflict. The result is a comparison of states recently embroiled in civil wars to states such as Sweden and Austria that have been peaceful democracies for long periods of time. It is critical to select appropriate states because the study of states with different types of experiences and institutions will result in comparing unlike things. Democracies and non-democracies differ greatly in the ability of their institutions to govern due to resource differences but also the history of democratic institutional knowledge and experience. States with established histories of democracy have, typically, a high level of the rule of law and any change in the rule of law would be minor regardless of any efforts at transitional justice such as a TRC. States conducting different kinds of commissions with different procedures, objectives and methods will also result in different reactions, making it difficult to determine if the commission has caused the reaction or some other force has.

The first necessary step is to select appropriate cases. This is particularly difficult in the context of TRCs because there are several definitions of TRCs, all yielding a different universe of TRCs. The broadest definitions generally include all types of commissions conducting an inquiry into an issue of human rights abuses or conflicts, whether entitled TRC or not. The narrower definitions include only commissions that state in their charters the principles of TRCs, that of truth and reconciliation. The definition of a TRC was included in Chapter One and stresses the temporary, non-judicial nature of TRCs and their contribution to regime transition.

As described in the previous chapter, the first acknowledged TRC was the 1974 Ugandan TRC, although the Pakistan Commission in 1971, which fits the definition of a TRC but was not called one, was probably the first TRC. Between 1971 and 1995 there were twenty one TRCs in non-democracies; since the South African TRC in 1995 there has been an increased interest in TRCs with thirty two being conducted from 1996 to 2010. Several more were in progress as of 2012 and others have been proposed but not yet conducted.

Case Selection

A list of all TRCs conducted since 1971 was compiled from a variety of sources including the United States Institute of Peace, Justice in Perspective, and Olsen Payne, and Reiter (2010). Out of the seventy nine TRCs that have been conducted or proposed since 1971, forty are included in this dissertation and thirty nine are excluded. The forty TRCs that are included are set out below in Table 3.1 along with their years of operation. Thirty six are excluded for reasons set forth below in Table 3.2. The forty TRCs included here were conducted between 1981 and 2010. There is regional variety among the TRCs, with all continents other than North America and Antarctica being represented in the included cases. The largest number of cases, sixteen, come from Latin America, followed closely by fourteen from Sub-Saharan Africa. African states are divided between Sub-Saharan African states and Northern African states, with the Northern African states of Morocco and Algeria being included in the Middle-Eastern region rather than Sub-Saharan Africa due to their geographic location and their heavily Muslim population.

Table 3.1: States with TRCs Included in Study-1981-2010

Country	Years of Operation
Afghanistan	2004-2005
Algeria	2003-2005
Argentina	1983-1984
Bolivia	1982-1984
Burundi	1995-1996
Central African Republic	2003
Chad	1990-1992
Chile I	1990-1991
Chile II	2003-2005
Democratic Republic of the Congo	2003-2007
East Timor	2002-2005
Ecuador I	1996-1997
Ecuador II	2007-2009
El Salvador	1993-1994
Ghana	2003-2004
Guatemala	1997-1999
Haiti	1995-1996
Honduras	1993-1994
Lebanon I	2001-2002
Lebanon II	2005
Liberia	2006-2009
Morocco	2004-2005
Nepal	1990-1991
Nigeria	1999-2002
Panama	2001-2002
Paraguay	2004-2008
Peru	2001-2003
Philippines	1986-1987
Rwanda I	1993
Rwanda II	2000
Serbia and Montenegro	2001-2003
Sierra Leone	2002-2004
South Africa	1995-2002
Sri Lanka I	1995-1997
Sri Lanka II	2001-2002
Togo	2009-2010
Uganda	1986-1994
Uruguay I	1985
Uruguay II	2000-2002
Zimbabwe	1983-1984

Source: usip.org, justiceinperspective.org, Olson, Payne and Reiter

As noted above, thirty six TRCs are excluded from this study. The reasons for the exclusion of TRCs are explained below in Table 3.2. Most of the TRCs that were excluded were excluded because they did not fit the definition of a TRC listed in Chapter One, usually because they involved a single issue or were conducted in a state already considered a democracy. The year of 1981 was chosen as the commencement date for this dissertation since data on the rule of law is only available from 1981. This results in the exclusion of just three TRCs in Pakistan, India and Uganda. Only TRCs that completed their tasks by 2010, whether a report was released or not, were included to insure the rule of law data is available. Also, TRCs that terminated after 2010 were less likely to have had a substantial effect on the rule of law by 2013, making measurement of change impossible. Below is Table 3.2 showing the various excluded cases, the years of operation and the reason for the exclusion.

TRCs that occurred in states that were established democracies, as measured by Polity IV as having a score of at least +6 out on a -10 (autocracy) to +10 (democracy) scale are not included in this study. These excluded cases include the United States, Belgium, Canada, Germany, Lithuania, Mexico, Mauritius, South Korea, Norway and Sweden. While interesting, they do not fit the definition of TRCs as set forth in Chapter One, particularly factors four and five which require them to usually be created at a point of political transition and focus on the past, severe acts of repression and violence that were committed over a period of time. Democracies are not making political transitions and do not typically have severe acts of repression and violence. Most of the TRCs in these states like the United States, focus on a single event such as the incarceration of Japanese Americans during World War II. Thus, only TRCs occurring in states that were not democracies at the commencement of the TRC will be included with the exceptions of South Africa, 1995-2002 and Ghana, 2003-2004.⁹

⁹ South Africa's Polity IV scores rose from a +5 in 1991 to a +9 shortly before the TRC was conducted. Ghana's Polity IV scores rose from a +2 in 2000- to a +6 in 2001, making it a democracy, in the year the TRC was announced. Because of the short amount of time between the transition to democracy and the commencement of the TRC both are included here.

Several other commissions have been cited as TRCs by other studies but are excluded here because they do not fit the definition of a TRC explained in Chapter One. Most cases involve TRCs that involved a single issue or were not directed at the violations of the sponsoring state such as the Nigerian and first two South African commissions. Several commissions that are often included in studies of TRCs are excluded from this dissertation because they involve a single issue.¹⁰ The first, the Lumumba Commission considered the circumstances that led to the death of Patrice Lumumba in the Congo and the potential involvement of Belgium in the murder. Although the commission is an interesting one politically for Belgium, it was a single issue commission and does not fit the operative definition of a TRC used here (Verdoolaege & Kerstens, 2004, 79). The second, the Ivory Coast commission was concerned with only a few days of violence after the election (justiceinperspective.org). The third, the Bosnian TRC regarding Srebrenica only considered the deaths of civilians during a nine day period in the Yugoslavian civil war (justiceinperspective.org/Bosnia) and was therefore a single issue commission. The fourth, the Peruvian commission in 1986 was only concerned with the killing of prisoners in a single incident. The fifth, the United States commission on Japanese Internment considered more than one issue, looking at the internment of Japanese-Americans during World War II and the treatment of Alaskan Aluets. However, it is not included because the United States was a democracy at the time of the commission (justiceinperspective.org). The sixth was the other United States TRC that is sometimes cited, including by Hayner (2011) is the Greensboro Truth Commission (62). That commission was not an official commission, being organized instead by civil society and concerned a single issue regarding the killing of five people during a “Death to the Klan” march in 1979. As such, it does not fit two parts of the definition of a TRC and it is also a sub-national commission which would not have national effect (justiceinperspective.org).

¹⁰ Hayner (2011) and Olsen, Payne, and Reiter (2010) include several of these commissions in their discussions of TRCs.

A second set of TRCs that are excluded because they do not fit the definition include the 1992 and 1993 South African TRCs and the Ethiopian Special Prosecutor's Office from 1992 to present day. Both of the early South African TRCs were conducted by the African National Congress (ANC), not by South Africa and therefore had an effect only on ANC members, not on the larger state. They, therefore, do not qualify as TRCs under the definition. The Ethiopian commission was a judicial body, prosecuting people under Ethiopian law for violations of law and therefore does not qualify under requirement number three for a TRC although it is listed as a truth commission by the United States Institute of Peace database of truth commission (Special Prosecutor's Office-Ethiopia).

The last two groups of excluded cases include states that did not start or did not complete their TRC by 2010. Because the focus here is on changes in the rule of law after TRCs are concluded, any ongoing TRCs or TRCs that were concluded in 2011 or 2012 will be excluded. Only two TRCs were completed since 2010, the Solomon Islands TRC which was concluded in February of 2012 and the Thailand TRC which concluded in September of 2012. The Solomon Islands TRC has released its final report only to the government, which has refused to act on it or to release it to the public. As of early 2013, no report has been released by the Thailand TRC. Similarly, TRCs in Brazil, Canada, the Ivory Coast, Kenya, Mauritius and the United States (Maine Wabanaki-State Child Welfare TRC Process) are excluded because they were ongoing as of 2013 or had only recently commenced and/or because they fail to meet other criteria such as involving only local issues. The rest of the excluded TRCs involve those which were proposed but never began at least as of December 2012.

There are three generally acknowledged attempts at TRCs that have not yet begun or were cancelled, including Bangladesh, Fiji and Northern Ireland. In the case of Northern Ireland a private organization has created a TRC called the Legacy Commission but no official TRC has been formed (The Truth and Reconciliation Commission for Ireland and Britain, PRLog). In Bangladesh the proposed TRC was declared unconstitutional by the Supreme Court because it proposed to offer partial amnesty to

offenders and was created by the executive, not the judicial branch that had exclusive jurisdiction over crimes and punishments (Rahman, 2008). In Fiji a military coup occurred after the TRC had been approved but before its commencement and the proceedings were canceled (Larson, 2008). None of these will be included for the reasons discussed above. See Table 3.2 below for the complete list of excluded cases.

Table 3.2: Excluded TRC Cases

<u>State</u>	<u>Years of Operation</u>	<u>Reason for Exclusion</u>
Australia	1996-1997	Democracy
Bangladesh	2008	Never begun
Belgium	2001	Single issue
Bosnia	2004	Single issue
Brazil I	1979-1982	Pre-1981
Brazil II	May, 2012	Not completed
Canada I	1991-1996	Democracy
Canada II	2009-ongoing	Democracy
Estonia	2001	Democracy
Ethiopia	1993-2007	Single issue
Fiji	2006-never begun	Never begun
Germany I	1992-1994	Democracy
Germany II	1995-1998	Democracy
Grenada	2001	No Polity IV data
Honduras II	2010-2011	Not completed
India	1977	Pre-1981
Ivory Coast I	2000-2001	Single issue
Ivory Coast II	2011-ongoing	Not completed
Kenya	1983-1984	Single issue
Kenya	2009-ongoing	Not completed
Lithuania	1998	Democracy
Mauritius	2009-ongoing	Not completed
Mexico	2001	Democracy
Nigeria II	2009	Not entire state
Northern Ireland	Not yet	Private commission
Pakistan	1971-1974	Pre-1981
Peru I	1986-1988	Single issue
Solomon Islands	2010-Feb. 2012	Not completed

<u>State</u>	<u>Years of Operation</u>	<u>Reason for Exclusion</u>
South Africa I	1992	Not state action
South Africa II	1993	Not state action
South Korea I	2000-2002	Democracy
South Korea II		Democracy
Sri Lanka III	2010-2011	Not completed
Thailand	2010-Sept. 2012	Not completed
Uganda I	1974	Pre-1981
United States-Greensboro	2004-2006	Democracy, not entire state
United States-Japanese Internment	1980-1983	Democracy
United States-Maine Wabanaki	Not yet	Democracy
Zambia	1993	Single issue

Source: justiceinperspective.org, usip.org, Olsen, Payne, and Reiter (2010)

Control Group: States with Conflicts That Did Not Conduct a TRC

In order to determine whether changes in democracy and the rule of law that occur are related to the presence of a TRC rather than to other factors such as a general trend toward democracy in the world or in a region, it is necessary to compare countries that have had violent conflicts and TRCs to countries that had violent conflicts but no TRC. If countries with and without TRCs made similar progress toward democratization and the rule of law, then improvements that are detected may be part of a general trend rather than any effect from the TRC.

In order to examine this relationship all states that experienced violent conflict but did not utilize a TRC will be included in the model in order to compare their respective changes in democracy and the rule of law to those among the group of countries that conducted TRCs.¹¹ This group of cases was selected based on the nature of the conflict and the intensity of the conflict. Almost all states in the world were involved in some form of violent conflict between 1981 and 2010. For states like Japan, France, Italy and other first world countries most of those conflicts were interventions in states like Iraq and Afghanistan. Extra-systemic conflicts where the purpose for involvement is an armed intervention

¹¹ Many of these states have issued an amnesty and that variable will be considered in Chapter Four.

are not usually wars that destabilize a state or cause human rights abuses against their own citizens. Other types of conflicts such as the Falkland Island conflict with the United Kingdom or the invasion of Panama by the United States in 1988 are typically driven by foreign policy concerns rather than conflicts within the state. Non-democracies and states that may be considered electoral democracies but are not fully consolidated democracies are characterized by having armed internal conflicts or internationalized internal armed conflicts between the government and one or more opposition groups. These conflicts are commonly called civil wars as opposed to interstate wars and tend to be greatly destabilizing to the state because of the need to control the violence, often resulting in repression, loss of civil and political rights and injuries to physical integrity such as extra-judicial killings, torture and killing (UCDP PRIO Armed Conflict Dataset, Vol. 4, 2013).

All of the states included in the group of states with conflicts that did not conduct a TRC experienced a violent conflict involving battle deaths in excess of twenty-five for at least a year in a conflict that was either an intrastate conflict or an internationalized intrastate conflict as defined by PRIO. PRIO defines armed conflict as “a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths” (PRIO Codebook, Version 4, 1). The definition requires the use of arms to promote the parties’ position in the conflict that result in a minimum of twenty-five battle deaths within the dyad, although arms do not have to be weapons but can include things such as fire, stones and water. The government of a state is always one of the parties and the other party or parties includes any opposition group or alliance of those groups that is non-governmental, has an announced name, and is using force to influence the outcome of the conflict that either involves territory or government. PRIO notes that it “only deals with formally organized opposition. The focus is on armed conflict involving consciously conducted and planned political campaigns rather than spontaneous violence (PRIO, Codebook, Version 4, 2).

The PRIO dataset uses a measure of conflict that looks at the number of battle deaths within a year, with a score of zero representing battle deaths between zero and twenty-four, one representing battle deaths between twenty-five and nine hundred ninety nine, and a score of two representing more than one thousand battle deaths within a given year. There are many datasets regarding armed conflict that are available but the PRIO dataset has the advantage of calculating battle deaths from 1946 to 2011, the longer than temporal distance of this dissertation. It also calculates battle deaths of as few as twenty-five people in a given conflict in a calendar year. Most other datasets have a higher threshold of battle deaths, making it difficult to measure low battle death civil wars.

In order to capture the maximum number of states for this group, rather than just the most violent cases, all states experiencing battle deaths of twenty-five or more in a given year will be included. This results in a few relatively peaceful countries, such as Spain, being included because of their fairly low level of violent internal conflict with Basque separatists but countries experiencing extensive civil unrest such as Pakistan, India and Israel are also included, making a good group to compare to the TRC countries (PRIO Codebook). All states included in this dissertation experienced a conflict at some point between 1981 and 2010 that involved at least twenty five battle deaths during a given year. States not experiencing an armed conflict were excluded from the study. Forty four states with sixty-three conflicts from all regions of the world are included in this group. See Table 3.3 below for the group of states with conflicts that ended from 1981 to 2010 and that not conduct a TRC.

Table 3.3: States Not Conducting a TRC but Experiencing a Conflict-1981-2010

<u>State</u>	<u>Year Conflict Ended</u>
Angola	2008
Armenia	1994
Azerbaijan	1995
Bangladesh I	1990
Bangladesh II	2005
Burkina Faso	1987
Cambodia	1998
Comoros I	1989
Comoros II	1997
Republic of the Congo	2002
Croatia	1995
Cuba	1989
Djibouti	2008
Egypt	1998
Eritrea	2008
The Gambia	1981
Georgia I	1992
Georgia II	2004
Georgia III	2008
Guinea	2000
Guinea-Bissau	1999
Indonesia I	1992
Indonesia II	1998
Indonesia III	2005
Iran	1996
Iraq I	1987
Iraq II	1996
Israel	1996
Laos	1988
Lesotho	1998
Libya	1987
Macedonia	2001
Malaysia	1981
Mali I	1985
Mali II	1990
Mali III	1994
Mali IV	2009
Mexico I	1994
Mexico II	1996
Moldova	1992
Mozambique	1992
Namibia	2002
Niger I	1994
Niger II	2000

<u>State</u>	<u>Year Conflict Ended</u>
Pakistan I	1990
Pakistan II	1996
Papua New Guinea	1996
Senegal	2003
Spain I	1982
Spain II	1987
Spain III	1992
Syria	1982
Tajikistan	1998
Tanzania	1992
Thailand I	1982
Thailand II	1988
Trinidad and Tobago	1990
Uzbekistan I	1996
Uzbekistan II	2000
Uzbekistan III	2004
Venezuela I	1982
Venezuela II	1992
Vietnam	1989

Source: PRIO

Data Challenges

There were two challenges in the compilation of empirical data for this analysis. The first was that, ideally, data from before the TRC and after the TRC should be used to measure its impact on the state. Since all of the TRCs considered in this dissertation were completed before it was written it was impossible to conduct a survey or interview government leaders or citizens before the TRC occurred. Additionally, survey data is only available for a handful of the states. Because of this limitation, existing data from indexes on democracy and the rule of law were used.

Second, those indexes were created for reasons unrelated to the question of TRCs but have the advantage of being comprehensive, both in terms of the temporal range of this dissertation and the states involved in the study. Some factors that would ideally be included in the study have had to be eliminated because they are not available for all states. For example, survey data on public opinion on the TRC and the rule of law is available for a few states only. Survey data from Afrobarometer has been used, however, in the Liberia and Mozambique case studies because it is available and is comparable. In

both cases survey data was used regarding citizen perceptions of corruption and in Liberia survey data was examined regarding perceptions of the TRC and amnesty or prosecution for human rights violators.

Variables and Datasets Used

The independent variables are the existence of a TRC, an amnesty regardless of the type, a TRC combined with an amnesty and the cumulative intensity of the conflict. The dependent variables are level of democracy in the state as measure by Polity IV and measure of rule of law as measured by the Cingranelli-Richards (CIRI) index. The method for measuring these variables is discussed below. Intervening variables such as GDP per capita and population size were not included because they were found not to be significant in the Olsen, Payne, and Reiter (2010) and Wiebelhaus-Brahm (2010) studies of this same issue. Similarly, population is excluded as a variable because only Wiebelhaus-Brahm uses it and he argues it was relevant to human rights abuses, not rule of law or democracy. Regional differences were also not included because, given the two groups being compared here, collinearity exists between the use of TRCs and amnesties and two of the regions, Latin America and Sub-Saharan Africa (virtually all of the states in those regions conducted a TRC or an amnesty or both, leaving no possibility of variance). Lastly, the intervening variable of war crimes trials is excluded as a variable because war crimes trials only occurred in a few cases. Olsen, Payne, and Reiter used war crimes trials as a variable, but included trials that were primarily domestic trials conducted by authoritarian states to legitimate the new regime with trials held with international assistance used to provide justice. Because of this lack of a standard definition of war crimes trials this variable was excluded.

There are two datasets used in this dissertation to measure the two dependent variables—democracy and the rule of law. The data regarding democracy used for this dissertation comes from Polity IV and is expressed in terms of scores from -10 to +10 for the level of democracy in each state from 1981 to 2010. The relation between a Polity IV score and the level of democracy in a state is clear,

the higher the positive score the more democratic a state is. The democracy score is based on four composite indices, looking at the competitiveness of executive recruitment, the openness of executive recruitment, constraint on the executive and the competitiveness of political participation. A -10 score connotes an institutional autocracy, with the same four factors plus one additional one, regulation of political participation (Polity IV, 2010, 15-16). The Polity2, or adjusted Polity score, which is used here, is calculated by subtracting the autocracy score from the democracy score and adjusting three special situations that can occur in conflicted states, namely foreign interruption, anarchy and transition, so scores can be used for statistical analysis. Without these adjustments the scores cannot be compared since the adjustments are coded as 66, 77 or 88 and will skew calculations of scores which range from -10 to +10. The adjustments are done by Polity IV and according to their Codebook are done for the purpose of allowing the conversion of these unusual scores to the conventional Polity IV scale (Polity IV Codebook, 17).

According to the Adjusted Polity IV measure, states with high democracy scores are characterized by having executives recruited through elections rather than by force or designation by political elites, who are chosen in elections with two or more competition parties or are openly recruited by elites. The executive is subordinate or equal to a legislature, chosen by an accountability group (parliamentary systems), with an unstable cabinet composition and competitive and enduring political parties (Polity IV Codebook, 2010, 20-27). Parliamentary and presidential systems are equally acceptable.

States with high autocracy scores tend to have the opposite characteristics of states with high democracy scores. They tend to have executives selected by rigged elections or deposed during their term of office, executives who achieve office through hereditary succession, little restraint on the power of the executive with a weak or non-existent legislature, factionalization in political participation combined with the exclusion of some groups and repressed or suppressed political participation outside

of the ruling party or regime. (Polity IV Codebook, 2010, 20-28). Many of these political systems are monarchies, military juntas, dictatorships, theocratic republics or states with single party systems. Polity IV notes that some governments are a mixture of democratic and autocratic tendencies, often allowing more relaxed participation or political competition while retaining a strong executive. Although they may have different types of political system, states with high autocracy scores share some things in common-low executive constraint, low or restricted political participation and fraudulent or controlled elections that do not reflect the public will.

Polity IV data is not available for all states in the world and for some states it is unavailable during times of conflict. All states with TRCs that include in this dissertation have Polity IV data for at least part of the time, although several states do not have data before 1991 because they were originally part of the Soviet Union and were not independent states in 1981. All of the states in the non-TRC control group had data from Polity IV for at least part of the period (except Bosnia Herzegovina). Many of them were also former Soviet bloc states that were not independent until 1991. Bosnia Herzegovina is included in the statistical analysis of democracy only and is excluded from the dataset for rule of law. Otherwise, all existing data from 1981 to 2010 is used for most states, for a total over two thousand cases are included in the dataset from thirty four states conducting TRCs and fifty states with violent conflicts and without a TRC.¹² Several states are excluded from the analysis of changes in mean in Chapter Four because they did not have a Polity IV or CIRI score prior to the TRC or end of conflict.

The data regarding the rule of law comes from the CIRI Human Rights Dataset. This dataset includes data from 1981 to 2010, therefore encompassing most of the years that TRCs have been utilized and all of the years of the TRCs included in this dissertation. It also includes information from all states conducting TRCs which is an advantage over other datasets such as the Freedom House sub-

¹² A case is a single year for a state in either the study group or control group. Since most states have thirty years of data, most states are thirty cases for the dataset.

scores on rule of law, which are only available from 2006 and the World Justice Project which has data from a few states since 2008 but none before then (worldjusticeproject.org). CIRI takes its data from the United States State Department Reports on Country Practices and from Amnesty International, giving the data a distinctly westernized aspect. This can be problematic since the states involved in this dissertation are not western states, but it is currently the best, comprehensive dataset available. This westernized aspect is particularly apparent in the dataset's inclusion of two indexes involving exclusively women's rights which include six points out of the total score for rule of law of thirty points, making women's rights one-fifth of the total score. Women's rights are of course important and because of the incidence of rape, sexual violence, sexual slavery and domestic violence during times of conflict, are particularly important in post-conflict states. However, they tend to be lower in most Middle Eastern, Asian and African states. In comparison, the factors normally associated with human rights such as torture, imprisonment, extrajudicial killing and disappearances are given a maximum score of eight out of thirty, only two points more than women's rights.

The CIRI database has scores from zero to thirty, with the higher score indicating a higher level of rule of law within the state. Various sets of data were combined into composite indexes. Scores of zero for all factors in the physical integrity composite index represent the practice being used frequently, one indicates occasionally and two indicates it did occur during the year.¹³ The empowerment rights, such as freedom of speech and religion are given a score of zero when there is complete restriction of the right, one indicates some restriction of the right and two indicates no restriction of the right.¹⁴

Women's rights include such rights as the rights to vote, hold public office, receive equal pay for equal work, have job security, be free from sexual harassment in employment, the right to be free from

¹³ The codebook indicates, however, that in situations where one or two violations were seen during a year and the violators were prosecuted, it should still be coded as a two. CIRI Codebook, 2010, 6.

¹⁴ The codebook indicates, however, that in all states, even those with a score of two, some restrictions do occur. CIRI Codebook, 2010, 29.

discrimination, the right to work at night, and the right to work in the police or military. Scores of zero indicate women have no political or economic rights or only men have political and economic rights, scores of one indicate there may be no laws discriminating against women but in fact they are extensively discriminated against at work or in government, scores of two indicate there are some legal protections for women but they are still less than thirty percent of the legislature or government jobs or some low level amounts of economic discrimination, while a score of three represents a state where women hold thirty percent or more of the seats in the legislature or parliament or are granted economic rights by law and those rights are enforced (CIRI Codebook, 2010, 65-76). See Table 3.4 below for a list of the various factors and their relative weight.

Table 3.4: CIRI Factors and Relative Weight

<u>Factor</u>	<u>Composite Index</u>	<u>Relative Weight</u>
Disappearance	Physical Integrity	0-2
Extrajudicial killings	Physical Integrity	0-2
Political imprisonment	Physical Integrity	0-2
Torture	Physical Integrity	0-2
Freedom of assembly and association	Empowerment Rights Index	0-2
Freedom of foreign movement	Empowerment Rights Index	0-2
Freedom of domestic movement	Empowerment Rights Index	0-2
Freedom of speech	Empowerment Rights Index	0-2
Electoral self-determination	Empowerment Rights Index	0-2
Freedom of religion	Empowerment Rights Index	0-2
Worker's rights	Empowerment Rights Index	0-2
Women's economic rights	No composite	0-3
Women's political rights	No composite	0-3
Independence of judiciary	No composite	0-2
Total		0-30

Source: CIRI Variable's List and Short Descriptions

CIRI provides data for all of the states that conducted a TRC and the control regarding the rule of law during a portion of the temporal period. Some states, primarily post Soviet Union states, only have data from 1991 and a few are missing data for selected years that fall during times of conflict. This

missing data is excluded from the analysis but given that over two thousand cases (as defined in footnote 7 above) are included in this study, it has no effect on the analysis.

Cumulative Intensity of Conflict

The last variable is the intensity of the conflict for both the states conducting TRCs and the group of states with conflicts that did not conduct a TRC. All states, even fully consolidated democracies, experience some form of armed conflicts in their histories. The intensity of the conflict is what distinguishes minor conflicts from violent conflicts that threaten the stability of the government and the security of the people. The expectation is that states which experience intense conflicts and conduct a TRC will have a greater improvement in democracy and rule of law than states that do not conduct a TRC.

Here, states are coded "zero for each year until reaching a threshold of one thousand conflict-related deaths, then are coded "one" for every year thereafter until the conflict is concluded. PRIO calculates this measure by looking at the cumulative number of battle deaths from the beginning of an armed conflict to the end. For example, Afghanistan has been involved in an internal conflict or an internationalized internal conflict since 1978 and has been given a score of one continuously since 1978.

¹⁵ On the other hand, Algeria had a conflict that began as a low intensity conflict in 1991 with less than one thousand battle deaths, but by 1993 had accumulated enough battle deaths to have more than one thousand. In 1994 the yearly total of battle deaths exceeded one thousand and stayed at that level with an intense conflict continuing thereafter.

¹⁵ Only data from 1981 is used here, however.

Quantitative Tests

Means Tests

There are two quantitative tests used in this dissertation. The first test, a test of means, compares the mean democracy and rule of law scores before a TRC was conducted and compares that mean score to the next five years' scores. All states included in the study, whether having conducted a TRC or not, were included with the exception of states which did not have at least two years of data before the TRC or the end of the conflict.¹⁶ Most states had five years of democracy or rule of law data after the TRC or conflict, but all had at least three except the third Malian conflict that ended in 2009.

After the means were established before and after the TRC or the conflict, the difference in scores was compared for both independent variables and states were divided into three groups-positive change in score, no change in score and negative change in score. States experiencing less than a one point difference were included in the no change in score group. The percentage of cases in each group of states conducting a TRC was then compared to the percentage of states not conducting a TRC.

An additional analysis of means was conducted, following the same format, to determine the differences in mean scores between states conducting different forms of transitional justice: a TRC and an amnesty, a TRC and no amnesty, no TRC and an amnesty, and no TRC and no amnesty. The percentage of mean scores for each of the forms of transitional justice are then compared to determine which of the forms of transitional justice has the greatest percentage of states experiencing a positive change in democracy and rule of law.

The last test of means considered the independent variable of cumulative intensity. Because the hypothesis only considers whether states that conducted TRC and experienced intense conflicts had higher democracy and rule of law scores, only the means for states with intense conflicts were

¹⁶TRC states were only missing data for rule of law, with Afghanistan, East Timor, Lebanon and Serbia & Montenegro having insufficient rule of law data. States not conducting a TRC also only missed data for rule of law, with Georgia, Comoros and Moldova having insufficient rule of law data.

compared. Twenty seven states that conducted a TRC had intense conflicts, while thirty two states with a conflict that did not conduct a TRC had intense conflicts. Like with the two variables above, states were divided into three groups, those with positive changes, no changes and negative changes in scores.

Multivariate Regression Analysis Tests

The second form of statistical testing that was conducted consisted of a multivariate regression analysis of all forty TRCs and sixty three conflicts. Data regarding the one hundred and three conflicts from 1981 to 2010 for the dependent and independent variables. Each year from 1981 to 2010 was coded as a state/year. A standard regression analysis with an Analysis of Variance (ANOVA) conducted to test three hypotheses for each dependent variable, with the independent variables of TRC, amnesty, a combination of TRC and amnesty, and cumulative intensity used for the democracy variable. An additional independent variable of revised Polity IV score was used for the rule of law variable. Both regression models (democracy and rule of law as the respective dependent variables) were also subjected to a series of regression diagnostics, including tests for unusual and influential data points, normality of the residuals, multicollinearity, and homoscedasticity. Tests for unusual or influential data points included checking the studentized residual and the leverage of each of the observations. No individual case had a studentized residual in excess of the recommended level of 2.5.

In order to test the normality of the residuals kernel density plots were used, the results of which closely approximated the standard normal distribution. Finally the Shapiro-Wilk test for normality was used, confirming the normality of the data ($\text{Prob} > z = .43$).

To rule out multicollinearity two tools were used. The first was a correlation matrix of the variables which gave no indication of collinearity problems. The second was looking at the variance inflation factors which were acceptably low (mean VIF = 1.42 and 1.23 respectively). To test for homoskedasticity White's general test statistic was used. It produced a p-value of .371 well above the critical value of .05 required for rejection of the null hypothesis of constant variance.

Case Studies-Liberia and Mozambique

Two case studies follow in addition to the quantitative testing of all states conducting TRCs and the control group of states. Liberia and Mozambique were chosen as case studies because Liberia conducted a TRC and is part of that group while Mozambique is part of the control group. Liberia conducted both a TRC and has had a *de facto* amnesty while Mozambique deliberately chose to make no formal efforts to seek transitional justice and issued both a blanket amnesty and has taken no action to conduct war crimes trials or a TRC. Additionally, both Liberia and Mozambique suffered from similar civil wars, with massive fatalities and other casualties as well as internally displaced populations and refugees who fled to neighboring states. There is one major difference between the two states, however. The Liberian civil war was primarily caused by ethnic divisions while the Mozambican civil war was caused primarily by political and ideological differences. The cause of the war may affect the ability of a state to improve democracy and the rule of law so the causes of the war will be discussed in the case studies as they relate to the efforts to bring about democracy and the rule of law.

For both case studies data from the same sources used in the quantitative study will be used- Polity IV and CIRI. However, the subscores, when available for both datasets will be utilized. Additionally, data on both democracy and rule of law from Freedom House and the Bertlesman's Transformation Index will be utilized along with data regarding corruption from Transparency International. Additionally, field research data from an October, 2011 trip to Liberia will be utilized along with Afrobarometer survey data and survey data from the Berkley Human Rights Center. When possible, identical data sources will be used to make the best comparison possible. When identical sources are not available the differences are noted. The history of democracy in both states will be analyzed, using historical Polity IV and elections data, where available. Very little historical data on rule of law is available but BTI has some historical information on rule on law, particularly regarding civil and

criminal justice and freedom of speech and association. Where available, that historical data will be used to provide information about both states before their respective civil wars.

CHAPTER FOUR: DO TRCS WORK?

The purpose of this chapter is to explore the relationship between Truth and Reconciliation Commissions (TRCs) and improvements in democracy and rule of law, using statistical analysis and to compare that relationship to states that experienced a conflict but either used amnesties instead of TRCs or used neither method of transitional justice. I also test whether the intensity of the conflict affects changes in democracy and rule of law. The ability of TRCs, amnesties or both TRCs and amnesties to promote democracy and the rule of law will be analyzed using data from both groups of states and comparing their experiences in democracy and rule of law since the TRC or the end of the conflicts.

The data cover states that conducted a TRC between 1981 and 2010 or experienced a conflict that was concluded by 2010. I examine the differences in democracy and rule of law scores before and after the TRC or the conflict to determine if there was an improvement or deterioration in democracy or rule of law scores after the TRC or end of the conflict. As explained in detail in Chapter 3, data regarding democracy was derived from the Polity IV data set which scores democracy levels within a state from a -10 to a +10. Data regarding rule of law was derived from the CIRI index which looks at various factors of rule of law including physical integrity rights, empowerment, women's political and social issues and the independence of the judiciary and scores the rule of law on a 0 to 30 point scale. The data regarding conflict intensity comes from the Uppsala Conflict Data Program (UCDP) which looked at the cumulative level of battle deaths for individual conflicts from 1981 to 2010 and scored them as being either not intense if battle deaths were 0 to 999 and intense if battle deaths exceeded 1,000.

The analysis was conducted to determine if states had a larger gain in democracy and the rule of law if they utilized one of the three forms of transitional justice: TRCs alone, TRCs with amnesties, amnesties alone, or neither of the forms of transitional justice. The TRC or the conflict must have ended by 2010 for there to be any data showing change since both the Polity IV and CIRI data are available

from 1981 to 2010 and are used here. That fact that a state experienced gains in democracy does not show that the form of transitional justice was necessarily the cause of the gain, just that there is a relationship. This issue will be explored in more depth in Chapters Five and Six in the case studies of Liberia and Mozambique.

Table 4.1 below provides an overview of the data, including the descriptive statistics for both democracy and rule of law showing the number of cases and the minimum and maximum range for the variables tested in this dissertation. I include data for thirty four states that conducted a total of forty TRCs and forty four states that had a total of sixty two conflicts and did not conduct a TRC from 1981-2010, as described in Chapter Three. A state/year is coded as 0 for TRC for the years prior to a TRC or if no TRC occurred and 1 from the year a TRC commenced to 2010. Similarly, a state/year is coded as 0 for amnesty the years prior to an amnesty or three years after an amnesty and 1 for amnesty for the year an amnesty was issued and for the next three years. A state/year is coded as 0 for cumulative intensity for the years prior to the total number of battle deaths in a conflict exceeding 1,000 and a 1 for the year battle deaths exceeded 1,000 to 2010. The unit of analysis is a state/year, so most states have thirty years of data.

Table 4.1: Descriptive Statistics

	Number of cases (state/years)	Minimum value	Maximum value
TRC Only	124	0	1
Amnesty Only	787	0	1
Both TRC and Amnesty	1110	0	1
No Transitional Justice	213	0	1
No Data	46	0	0
Total Rule of Law (CIRI)	2268	0	30
Total Polity IV	1975	-10	10
Cumulative Intensity (data source)	2157	0	1

The empirical section that follows analyzes the relationship between the independent variable of TRCs as compared to amnesty or combinations of amnesties and TRC for both the democracy and rule of law dependent variables. Six hypotheses, as set forth in Chapter Two, are tested first using an analysis of the changes in mean scores for democracy and rule of law scores five years from the date of the TRC or the end of the conflict to 2010 for each state individually and second using a multivariate regression analysis of all states that conducted a TRC or had a violent conflict for each variable to determine if a relationship exists between the independent and dependent variables.

More states had more years of CIRI data on rule of law than Polity IV data but all states had some data available for either democracy or rule of law. Most states had some form of transitional justice with the combination of a TRC and an amnesty being the most common form, followed by amnesty alone, no transitional justice method and lastly just a TRC.

The Relationship between TRCs and Democracy

The first hypothesis relates to the relationship between TRCs and improvements in democracy. All cases in the group of states conducting a TRC and the group of states with conflicts that did not conduct a TRC are included and the unit of analysis is state/year. The independent variable is the conduct of a TRC (whether in conjunction with an amnesty or not) and the dependent variable is the Polity IV democracy score. The hypothesis and data analysis are below. It is expected, based on the review of the literature, that states which utilized a TRC should have higher levels of democracy than states that did not conduct a TRC. Expectations and the data regarding the variables of amnesty and cumulative intensity will be discussed below in the analysis of hypotheses two and three.

Hypothesis One: There is a positive relationship between a state having conducted a TRC and an increase in democracy.

As discussed in chapter two, many authors argue that the use of a TRC increases the level of democracy in states after a conflict has ended. It is argued this occurs by the TRC assisting in the development of democratic institutions, trust in government, and a record of the offenses of the previous regime, or the truth, so the state can move toward a more open and responsive government.

To test this hypothesis Polity IV democracy data from all countries experiencing a TRC were compared to the same data from states that had a violent conflict and did not conduct a TRC. It is useful to examine the means of the individual states to see if there is a difference in means before the TRC and after the TRC in states that conducted a TRC, then compare that to the changes in means for states that did not conduct a TRC but had a violent conflict. If TRCs had a positive impact on democracy, states conducting a TRC should experience a higher mean democracy score after the TRC than before the TRC. Two tests were conducted to analyze this relationship: an analysis of the means of all states before the TRC or end of the conflict and five years after the end of the TRC or conflict and a multivariate regression analysis. The five year period was chosen because arguably the biggest impact of a TRC occurs shortly after it occurred, while states are making efforts to implement recommendations and publication of the final report allows citizen access to information on the TRC. For states that did not conduct a TRC the years immediately after the end of a conflict are most critical as states demobilize rebel groups, rebuild judicial institutions and remove members of the previous regime from power.

For the first test, the various cases were individually analyzed to see if there were changes in democracy five years after the TRC or conflict ended. The summary of the means for the group of states conducting a TRC and the group of states with conflicts not conducting a TRC is below as Table 4.2. Table 4.2 shows the percentage of states that experienced positive or negative change or no change within five years after a TRC was commenced or the conflict ended. Most states conducting a TRC experienced either a positive change in democracy within five years of the beginning of the TRC or no change in democracy scores, with a total of 57.5% of states that conducted a TRC experiencing a positive

change while 20.0% of states that conducted a TRC experienced a negative change in democracy scores within five years of the TRC. States in the group of states with conflicts that did not conduct a TRC experienced a substantially lower percentage of positive changes in democracy over the five year period, with 39.7% of the cases experiencing a positive change. Most states (44.4%) not conducting a TRC experienced no change in democracy over the five year period. This shows that in addition to the general trend toward higher democracy scores among states that conducted TRCs, states that did not conduct a TRC are more likely to experience no change in democracy after violent conflicts. A t-test was conducted regarding the significance of the difference in means between states that conducted a TRC and those that did not. The difference between the two groups was statistically significant at .000.

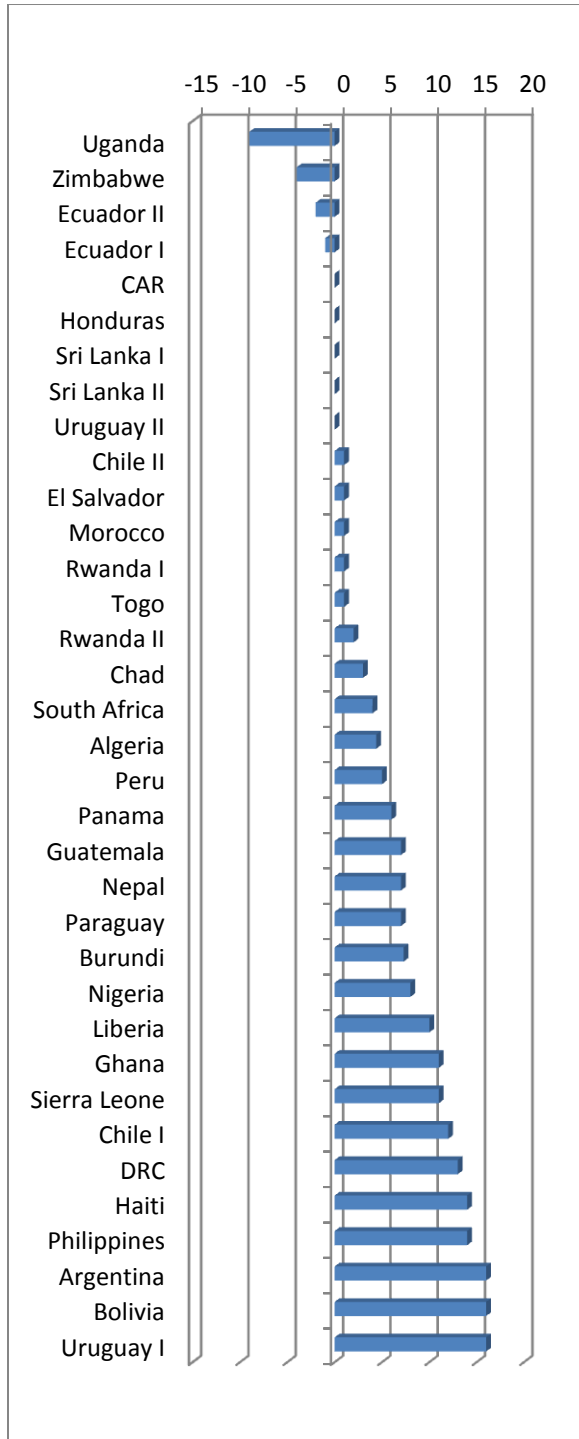
Table 4.2: Change in Democracy in TRC States after the TRC and in States with Conflicts after the End of the Conflict

	TRC Conducting States	States Not Conducting a TRC
Positive Change 0-5 Years After TRC or End of Conflict	57.5%	39.7%
No Change 0-5 Years After TRC or End of Conflict	22.5%	44.4%
Negative Change 0-5 Years After TRC or End of Conflict	20.0%	15.9%
No Data	0.0%	0.0%

Source: Polity IV

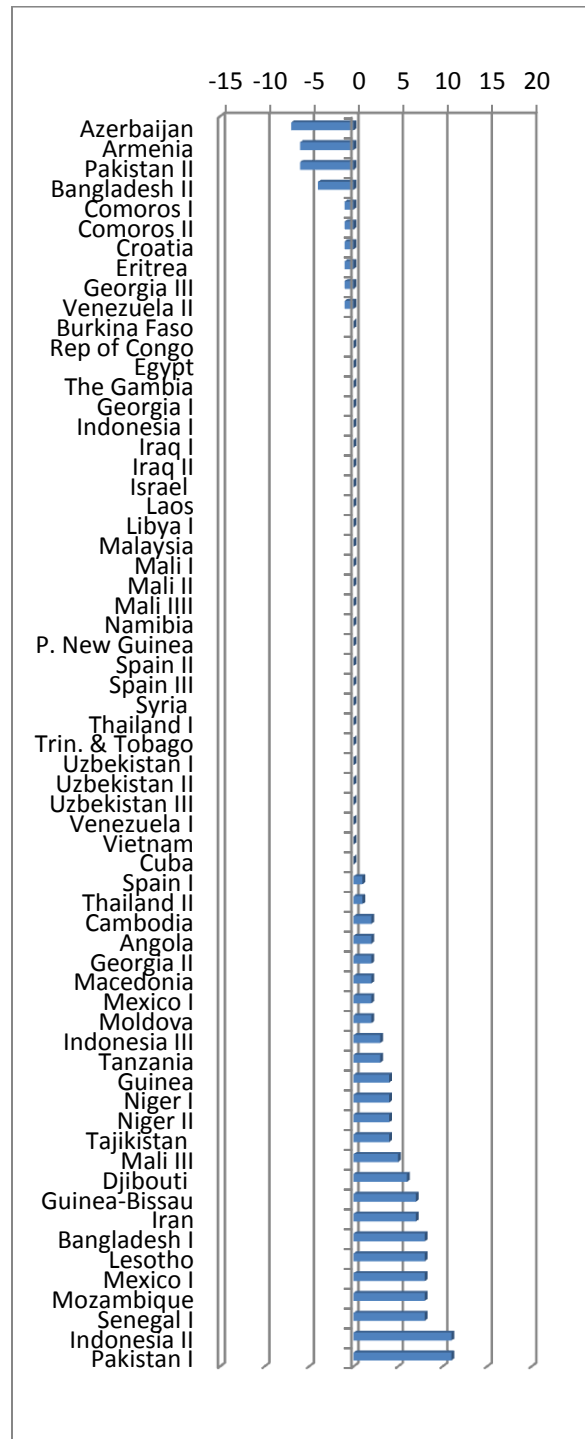
Below are Figure 4.1 and Figure 4.2 showing the distribution of those means among the states conducting a TRC and the group of states with conflicts that did not conduct a TRC. A discussion of the states experiencing the highest and lowest changes in democracy scores and the effect of amnesties and the intensity of a conflict is included in the conclusions regarding democracy.

Figure 4.1: Mean Changes in Democracy after TRC for States Conducting a TRC ¹⁷



¹⁷ States with no data omitted from the figure.

Figure 4.2: Mean Changes in Democracy for Non-TRC States and a Violent Conflict ¹⁸



¹⁸ States with no data omitted from the figure.

Lastly, a multivariate regression analysis was conducted regarding the relationship between some form of transitional justice and states conducting a TRC and states not conducting a TRC. In coding the independent variable of a TRC, years prior to a TRC or years in states without a TRC were coded with a zero, while years with a TRC or after a TRC were coded as a one. All states which had Polity IV data were compared from 1981 to 2010. It is expected, based on a review of the literature, that states which utilized a TRC should have higher levels of democracy than states that did not conduct a TRC. Expectations and the data regarding the variables of amnesty and cumulative intensity will be discussed below in the discussion on hypotheses two and three. All states which conducted a TRC or had a conflict and Polity IV data were compared from 1981 to 2010.

A multivariate regression analysis was used to compare the independent variables of the use of a TRC, amnesty only, the use of a TRC and amnesty together, or none of the forms of transitional justice, along with the cumulative intensity of the conflict, to determine if the independent variables significantly predicted the level of democracy of a state. The results of the regression analysis indicate there is a positive relationship between democracy and TRC, although all of the variables included in this analysis only explain 3% of the variance ($R^2=.030$, $F(15.425)$). They are significant at .000. See Table 4.3 below.

States in the group of states that had conflicts and did not utilize any of the transitional justice methods had average Polity IV scores of .360 while states that conducted a TRC had Polity IV scores 3.485 points higher. The difference was statistically significant. This regression shows that states that used a TRC experience dramatically higher and statistically significant levels of democracy as opposed to states without a TRC. Although this shows a strong positive relationship between TRCs and increases in Polity IV democracy scores, it only provides 3% of the total explanation of the variation, leaving other variables not included in the model having more influence on the Polity IV score. Democracy is a complex variable, affected by a variety of factors including the type of governmental system, levels of

ethnic fractionalization within the state, economic conditions, history of previous attempts at democracy, quality of institutions, and political culture of the state, among other variables. TRCs have a limited effect on most of these factors.

Table 4.3: Regression Analysis of TRCs, Amnesty, Cumulative Intensity and Democracy-TRC and non-TRC States

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.180	.032	.030	6.335

a. Dependent variable: Corrected Polity Score

b. Predictors: (Constant) Both TRC and Amnesty, Cumulative Intensity, TRCOnly, AmnestyOnly

ANOVA

Model		Sum of Squares	Df	Mean Square	F	Sig.
1	Regression	2476.493	4	619.123	15.425	.000 *
	Residual	73972.260	1843	40.137		
	Total	76448.753	1847			

a. Dependent variable: Corrected Polity Score

b. Predictors: (Constant) Both TRC and Amnesty, Cumulative Intensity, TRCOnly, AmnestyOnly

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficient	T	Sig.	Collinearity Statistics	
		B	Std. Error	Beta			Tolerance	VIF
1	(Constant)	.360	.444		.810	.418		
	Cum. Intensity	-1.672	.348	-.113	-4.808	.000*	.953	1.050
	TRCOnly	3.485	.930	.096	3.745	.000*	.799	1.252
	AmnestyOnly	-.329	.505	-.025	-.651	.515	.352	2.845
	TRC and Amnesty	1.225	.505	.097	2.484	.013	.345	2.902

a. Dependent variable: Corrected Polity Score

b. Predictors: (Constant) Cumulative Intensity, TRCOnly, AmnestyOnly TRC and Amnesty

Although the regression analysis appears to provide support for the hypothesis, other variables such as amnesties and cumulative intensity are included in the analysis and provide part of the explanation for the difference in democracy scores between states that conduct a TRC and states that experience

conflicts and do not conduct a TRC. The discussion regarding the relationship between these variables and democracy is below.

Comparison of TRCs and Amnesties and Improvement in Democracy

The second hypothesis relates to the comparison of TRCs and amnesties and their relationship to improvements in democracy. All cases in the group of states conducting a TRC and the group of states with conflicts that did not conduct a TRC are included and the unit of analysis is state/year. The independent variable is in the conduct of a TRC or an amnesty or both and the dependent variable is the Polity IV democracy score. It is expected, based on a review of the literature that states which utilized an amnesty should have lower levels of democracy than states that did not. The hypothesis and data analysis are below.

Hypothesis Two: There is a greater change in democracy in post conflict states that utilized a TRC as opposed to amnesties.

As discussed in Chapter Two, many authors state that states that conduct a TRC as compared to issuing an amnesty experience higher levels of democracy after a conflict has ended. TRCs can promote democracy by providing for accountability for perpetrators of abuses during the previous regime and by allowing the removal of members of the previous regime. It also allows for the spread of public knowledge of the actions of the previous regime. When amnesties are issued instead of a TRC being conducted, no record is made of the abuses and perpetrators are freed from any accountability for their actions and often stay in office in the new regime.

To test this hypothesis Polity IV data from all states conducting a TRC and from states not conducting a TRC but having experienced a conflict were compared to the same data from states that conducted a TRC and an amnesty and states that either just issued an amnesty or did neither an

amnesty nor a TRC. Like with Hypothesis One it is useful to examine the means of the individual states to see if there is a difference in means before the TRC or the end of the conflict and after. If TRCs have a positive impact on democracy, states conducting a TRC and no amnesty should experience a higher mean democracy score after the TRC than before. States issuing an amnesty should experience lower mean democracy scores after the end of their conflicts or a negative change in democracy scores. Two tests were conducted to analyze this relationship: an analysis of the means of all states before and five years after the TRC or end of the conflict and a multivariate regression analysis.

For the first test, the means of all states were calculated five years after the TRC or the end of the conflict and compared to the means to the beginning. Most amnesties are issued in an effort to bring closure to the violence and to allow the state to neutralize former rebels and their leaders by offering them amnesty from prosecution, usually within this five year period because that is the time when the demand for accountability is strongest and the new regime wants to neutralize former opponents. States that conducted a TRC and issued an amnesty have the highest positive changes in Polity IV scores over this five year period with 68.2% of states experiencing positive change. These states also experienced the lowest percentage of negative scores (4.5%) followed by states that did not conduct a TRC but did issue an amnesty (6.5%). States that conduct a TRC and do not issue an amnesty also do very well, with 61.1% of those states experiencing a positive growth in democracy although 16.7% of these states had negative changes in their democracy scores.

By contrast, states that do not conduct a TRC and do not issue an amnesty have the lowest level of positive scores (28.1%) and the highest level of negative scores with 25.0% while states that do not conduct a TRC but do issue an amnesty having the third highest scores at (51.6%). This shows that over this five year period states may have a greater improvement in democracy scores if they use one of the forms of transitional justice-either a TRC, amnesty or the combination of a TRC and amnesty. States that use none of the methods have the lowest percentage of states experiencing a positive change and the

highest number of states experiencing a negative change. States using TRCs, whether in conjunction with an amnesty or not, are also less likely to experience no change. The difference between the two groups was not statistically significant, however, probably because states that do not conduct a TRC but do issue an amnesty are almost as likely to experience an improvement in democracy as states that do conduct a TRC.

Table 4.4: Changes in Means for Democracy Five Years After the TRC and or the End of the Conflict for States Issuing or Not Issuing an Amnesty

	Conducted a TRC-No Amnesty	Conducted a TRC- Amnesty	Did Not Conduct a TRC-No Amnesty	Did Not Conduct a TRC- Amnesty
Positive change 0-5 years After TRC or End of Conflict	61.1%	68.2%	28.1%	51.6%
No Change 0-5 Years After TRC or End of Conflict	5.6%	18.2%	46.9%	41.9%
Negative Change 0-5 Years After TRC or End of Conflict	16.7%	4.5%	25.0%	6.5%
No Data	16.7%	9.1%	0.0%	0.0%

Source: Polity IV, Olsen, Payne, and Reiter (2010)

Over the five year period the means are highest if a TRC is conducted whether the state an amnesty or not. This does provide support for Hypothesis Two. However, the more important point may be that states that utilize one of the forms of transitional justice are more likely to see positive changes in democracy score than states that use none of the forms since states using none of the forms of transitional justice experience the lowest improvement in democracy scores and the highest negative change in scores of the four groups. See Table 4.4 below.

The second test was a multivariate analysis that was conducted regarding the relationship between amnesties and Polity IV scores and is set forth above in Table 4.3. The dependent variable of amnesty is negatively related to the Polity IV democracy scores with a score of -.329 but the relationship is not statistically significant. This is consistent with the means tests above which showed for states with

TRCs there was little difference whether an amnesty was issued or not but is inconsistent with the finding that states without a TRC experience higher positive change if they issue amnesty. This may be partially explained by the fact that states issued amnesties at different time after their conflicts and that some amnesties were specific and some were general. This is logical since amnesties, particularly general amnesties, can cause a backlash of hard feelings toward perpetrators who were not held accountable, a feeling that may lessen with time. This finding is also subject to the note mentioned above regarding the low level of overall explanation of the analysis since TRCs, amnesties, and cumulative intensity together only explain 3% of the variation in scores.

The variable of the combination of conducting a TRC and issuing an amnesty was also examined in this regression and that variable is also statistically insignificant although the score (1.225) is in a positive direction. This is consistent with the both tests of means which showed that there is little difference in Polity IV scores between states that issued amnesties and conducted a TRC and those that did not issue an amnesty, but because it is statistically insignificant it does not support the hypothesis.

The Effect of the Intensity of the Conflict on Democracy Scores

The third hypothesis relates to the effect of the intensity of a conflict on democracy. All cases in the group of states conducting a TRC and the group of states with a conflict that did not conduct a TRC are included and the unit of analysis is state/year. The independent variable is the level of intensity of a conflict and the dependent variable is the Polity IV democracy score. It is expected, based on the literature, that states that had intense conflicts and conducted a TRC would experience higher democracy scores than states with intense conflicts who do not conduct a TRC. The hypothesis and data analysis are below.

Hypothesis Three: States that experience intense conflicts with cumulative battle deaths in excess of one thousand and conduct a TRC experience higher democracy scores than states with intense conflicts who do not conduct a TRC.

As discussed in Chapter Two, authors argue that states that experience an intense conflict and conduct a TRC experience higher democracy scores than states that do not. It is argued this occurs by providing accountability for the abuses that occurred during a conflict but avoids the exacerbation of tensions that a war crimes tribunal could cause after an intense civil war or a series of human right abuses. Based on the literature it is expected that states that conduct a TRC will have higher democracy scores after an intense conflict than those who do not.

To test this hypothesis Polity IV democracy data from all states conducting a TRC were compared to all states not conducting a TRC, with cumulative intensity as the independent variable and Polity IV democracy score as the dependent variable. Like with the previous two hypotheses, it is useful to examine the means of the of the democracy scores of the various states to determine if there is a difference in means before the TRC or the end of the conflict and after the TRC or end of the conflict. In this hypothesis states fall into two groups: states that conducted a TRC and had intense conflicts and states that did not conduct a TRC and had intense conflicts. The same tests of means and multivariate regression analysis were conducted for these groups of states.

As with Hypothesis One and Hypothesis Two, the first analysis examines the mean of all states five years after the TRC or end of the conflict. Data regarding that analysis are shown below in Table 4.5 over the first five years states that experienced intense conflicts and conducted a TRC have a greater level of positive change in Polity IV scores (61.5%) as compared to states that experienced an intense conflict and did not conduct a TRC (40.6%). States that conducted a TRC were also less likely to have a negative change (7.7%) than states that did not conduct a TRC (18.8%). This supports the hypothesis that states experiencing intense conflicts are more likely to experience positive changes in democracy

scores if they conduct a TRC. See Table 4.5 below. However, the difference between the two groups was not statistically significant.

Table 4.5: Comparison of Changes in Democracy in TRC States after the TRC and in States not Conducting a TRC Five Years After an Intense Conflict

	TRC State and Intense Conflict	Non-TRC State and Intense Conflict
Positive change 0-5 years After TRC or End of Conflict	61.5%	40.6%
No Change 0-5 Years After TRC or End of Conflict	15.4%	40.6%
Negative Change 0-5 Years After TRC or End of Conflict	7.7%	18.8%
No Data	15.4%	0.0%

Source: Polity IV, PRIO

Finally a multivariate regression analysis was conducted regarding the effect of cumulative intensity on democracy. Table 4.3 above shows the analysis that was conducted regarding the relationship between the independent variable of cumulative intensity and the dependent variable of Polity IV democracy score. Cumulative intensity is negatively related to Polity IV democracy scores, with a score of -1.672 and the relationship is statistically significant at .000. This is consistent with the expectation that more intense conflicts would result in lower Polity IV democracy scores and coupled with the positive change in democracy experienced by states that conduct TRCs is consistent with the tests of means above and therefore supports the hypothesis. This finding is also subject to the note mentioned above regarding the low level of overall explanation of the analysis since these factors together explain only 3.0% of the variation in scores.

Conclusions Regarding the Relationship Between TRCs and Democracy

TRCs are positively related to improvements in democracy in states after conflicts and have a greater impact than amnesties or the combination of amnesties and TRCs. This remains true even if the conflict is intense. The comparison of means to the multivariate regression analysis shows one potential

problem with a regression analysis alone-since states conduct TRCs and experience conflicts at different times, the fact that change in democracy may occur differently over a short period of time, such as the five years used here, opposed to longer terms creates an issue with interpretation. Several states concluded their TRCs or conflicts within the past five years, the time period when the effects of a TRC or amnesty may be smaller than it is over the longer period of time. This may result in a lower relationship between TRCs, amnesties, and conflict intensity and democracy being shown. Therefore, a comparison of the means and the regression analysis provides a more comprehensive view of the relationship.

Both the test of means and the regression show that states that conduct a TRC experience higher democracy scores than states that do not conduct them. This improvement in democracy scores occurs whether states issue an amnesty or have an intense conflict. According to the regression analysis, the only significant factor is the conduct of a TRC and it is a robust and positive relationship. This is consistent with the test of means which shows over 18% of states conducting a TRC experience higher democracy scores than states without a TRC.

It is helpful to understanding this relationship to examine in more depth states that experienced either positive improvements in scores or negative changes in scores for both groups of states. The two states that conducted a TRC and experienced the worst or lowest democracy scores after the TRC were Zimbabwe (1983) and Uganda (1986) both of which are in Sub-Saharan Africa and were early examples of TRCs. These cases, two of the earliest TRCs, were held before best practices for TRCs could become established. The Zimbabwean TRC never released an official final report and the government issued a general amnesty for the perpetrators of the human rights violations, both of which could have affected the ability of the TRC to positively impact democracy scores. Government human rights abuses were not fully investigated and no recommendations of the commission were followed by the government (Commission of Inquiry-Zimbabwe). The Ugandan TRC in 1986 followed an earlier TRC in 1974 that was conducted by Idi Amin and was used primarily to identify enemies of Amin's administration (Truth

Commission-Uganda, 1974). The 1986 TRC was somewhat better but the report was not widely disseminated and the recommendations were not adopted by the Ugandan government. The United States Institute of Peace reports that the commission may have been used to legitimate the new regime, not investigate the truth of abuses (United States Institute of Peace-Uganda 1986).

Both Uganda and Zimbabwe issued amnesties. The Zimbabwean amnesties simply released perpetrators from any accountability for their actions. Zimbabwe's failure to disseminate a final report or follow any of the recommendations of the commission also lessened any accountability (Transitional Justice Database-Zimbabwe). The Ugandan amnesty gave an amnesty to former rebels and political prisoners, including member of the Uganda People's Democratic Movement (UPDM), a precursor to the Lord's Resistance Army that remains a rebel group in Uganda today (Transitional Justice Database-Uganda). In both cases, the amnesty coupled with an inadequate TRC process that did not unveil the truth about the conflict and did not disseminate information to the public is related to the failure to improve democracy within a state.

The biggest gains in democracy among the states that conducted a TRC occurred in three Latin American states, Argentina (1983), Bolivia (1982), and Uruguay (1985). These states were among the earliest to conduct a TRC and conducted them around same time as Uganda and Zimbabwe TRCs but with very different results in terms of democracy. All three states experienced strongly positive changes in democracy scores after the TRC with Argentina having experienced a change in Polity IV scores from -8 to +8 and Bolivia and Uruguay I having an increase from -7 to +9. These three states had twenty five to twenty seven years since the TRC to improve democracy but all three saw dramatic improvements within the first five years after the TRC and sustained positive democracy scores. Argentina's report was published and widely disseminated although its hearings were not public. Many of the recommendations were acted on and reparations were made to some victims (USIP-TRC-Argentina).

Unlike Argentina, in Bolivia the commission did not complete its work and no final report was issued.¹⁹ Some human remains were discovered but most of the work was not completed. After the TRC halted, war crimes trials were held of some of the former government officials and non-governmental agents which may have assisted in the transition to democracy in Bolivia (USIP-TRC-Bolivia). The first Uruguayan TRC did issue a final report but there was little official follow-up on its recommendations and it only considered a few cases of disappearances. A trial of *Tupamaros* leaders was held in 1982 but no government officials or military were tried (Horvitz and Catherwood, 2006, 450).

Of the states with the biggest gains in democracy, Argentina (1983), Bolivia (1982), and Uruguay (1985) both Argentina and Uruguay issued amnesties. Uruguay's amnesty was for members of the armed forces while rebel forces were tried for war crimes (Transitional Justice Database-Uruguay). Argentina issued an amnesty for both former rebels and members of the military but the amnesty was later repealed in 2003 (Transitional Justice Database-Argentina). However, Bolivia did not issue an amnesty until 1993 and still achieved a sixteen point increase in democracy scores over the five year period (Transitional Justice Database-Bolivia). The presence of amnesties in these states that made substantial improvements in democracy after a TRC demonstrates that issuing an amnesty is not negatively related to democracy when a TRC is conducted (or at least started). The last independent variable, the intensity of the conflict will be considered below in the discussion of states that did not conduct TRCs.

In the group of states that did not conduct a TRC and had a violent conflict, the states with the largest negative changes in democracy scores were Armenia (1994) with a negative score from +1 to -6 and Azerbaijan (1995) with a negative score from +7 to +1. Both Armenia and Azerbaijan had previously been part of the Soviet Union and gained independence in 1991. After independence a separatist

¹⁹ In fact the location of the records from the TRC is not known.

group, the Nagorno-Karabakh fought with Azerbaijan to join with Armenia. The ongoing conflict brought down the government of Azerbaijan and destabilized Armenia with both states having committed war crimes and human rights abuses during the conflict (Human Rights Watch, 1994, xii). Azerbaijan continues to have low Polity IV scores in 2010 while Armenia has scores that have improved to a +5 by 2010. At least in the case of Azerbaijan a TRC might have been able to resolve the conflict between the Azeri and Armenian populations, a problem which continues to this day because of the presence of both ethnicities in large portions of the state. Armenia (1994) did not issue an amnesty while Azerbaijan issued several amnesties after the conflict but they were primarily for those involved in the coup attempt (Transitional Justice Project-Azerbaijan).

The highest improvements in scores for states without a TRC were for the first Pakistan conflict in 1990 with an improvement of 11 points from a -3 to a +8 and the second Indonesian conflict in 1998 with an improvement of 11 points from a -4 to +7. Despite having not used a TRC these states had improvements similar to those of the highest performing states that conducted a TRC.²⁰ However, shortly after this five year period Pakistan experienced a military coup and its Polity IV scores deteriorated to a -5 in 2000. Indonesia's conflict that ended in 1998 with independence for East Timor was the conflict between Indonesia and the Revolutionary Front for a Free East Timor (*Fretilin*). Indonesia has maintained high democracy scores despite a conflict that ended in 2005 with the Free Aceh Movement (GAM), with scores improving from +5 to +8 after that conflict. Indonesia has recently considered conducting a TRC regarding the conflict with GAM (Human Rights Watch, 2013, 9). Pakistan did not issue an amnesty and while Indonesia did issue an amnesty in 1998 for the East Timor insurgents (Transitional Justice Database-Pakistan and Indonesia). It should be noted that despite the

²⁰Indonesia returned to violent conflict after the period of improvement in democracy scores with the Tuareg Rebellion which is an ongoing conflict (<http://www.bbc.co.uk/news/world-africa-13881978>). Pakistan experienced a military coup in 1996.

improvement in democracy scores both Indonesia and Pakistan later experienced another violent conflict.

Finally, the fact that the independent variables of TRCs, amnesties, TRCs and amnesties, and cumulative intensity provide only 3.0% of the explanation for democracy shows there are a number of other variables that need to be considered. Despite the amount of money being spent on TRCs to promote democracy it appears their real effect may be relatively small and that money should be directed toward other methods of transitional justice or improvements in the economy or governmental institutions.

The Relationship Between TRCs and Rule of Law

The fourth hypothesis relates to the relationship between TRCs and improvements in rule of law. All cases in the group of states conducting a TRC and the group of states with conflicts that did not conduct a TRC are included and the unit of analysis is state/year. The independent variable is in the conduct of a TRC (whether in conjunction with an amnesty or not) and the dependent variable is the CIRI rule of law score. The hypothesis and data analysis are below. It is expected, based on the review of the literature, that states which utilized a TRC should have higher levels of rule of law than states that did not conduct a TRC. Expectations and the data regarding the variables of amnesty and cumulative intensity will be discussed below in the analysis of hypotheses five and six.

Hypothesis Four: There is a positive relationship between a state having conducted a TRC and an increase in rule of law.

As discussed in chapter two, many authors argue that the use of a TRC increases the level of rule of law in states after a conflict has ended. It is argued this occurs by the TRC assisting in the creating institutions, creating trust in judicial institutions, and bringing out the truth about attacks on physical

integrity rights such as torture, extrajudicial killings and disappearances in previous regimes. Detractors argue that TRCs can actually detract from the rule of law because they advocate impunity and lack of accountability by offering a TRC in the place of prosecution for human rights violations and war crimes.

To test this hypothesis Cingranelli-Richards (CIRI) rule of law data from all countries conducting a TRC were compared to the same data from states that had a violent conflict and did not conduct a TRC. Like with Hypothesis One it is useful to examine the means of the individual states to see if there is a difference in means before the TRC and after the TRC in states that conducted a TRC, then compare that to the changes in means for states that did not conduct a TRC but had a violent conflict. If TRCs had a positive impact on rule of law, states conducting a TRC should experience a higher mean rule of law score after the TRC than before the TRC. The same two tests were conducted to analyze this relationship: an analysis of the means of all states before the TRC or end of the conflict five years after the end of the TRC or conflict and a multivariate regression analysis.

For the first test, the various cases were individually analyzed to see if there were changes in rule of law five years after the TRC or conflict ended. The summary of the means for the group of states conducting a TRC and the group of states with conflicts not conducting a TRC is below as Table 4.6. Table 4.6 shows the percentage of states that experienced positive or negative change or no change within five years after a TRC was commenced or the conflict ended. Most states conducting a TRC experienced either a positive change in rule of law within five years of the beginning of the TRC or no change in rule of law scores, with a total of 57.5% of states that conducted a TRC experiencing a positive change and 20.0% experiencing a negative change in rule of law scores within five years of the TRC. States in the group of states with conflicts that did not conduct a TRC experienced lower positive changes in rule of law scores over the five year period, with only 44.4% of the cases experiencing a positive change as opposed to 57.5% for states that conducted a TRC. Both groups of states had

comparable levels of states with negative changes with states conducting TRCs having 20.0% and states not conducting a TRC having 19.0% of the states experiencing negative changes in rule of law scores.

This demonstrates that although the general trend is toward higher rule of law scores among states that conducted TRCs, individual states experienced similar negative changes in rule of law scores compared to the group of states that did not conduct a TRC. This supports Hypothesis Four because states conducting TRCs have overall more positive gains in rule of law scores over the five year period from the date of the TRC or the end of the conflict. See Table 4.6 below. The difference between the two groups was statistically significant at .000.

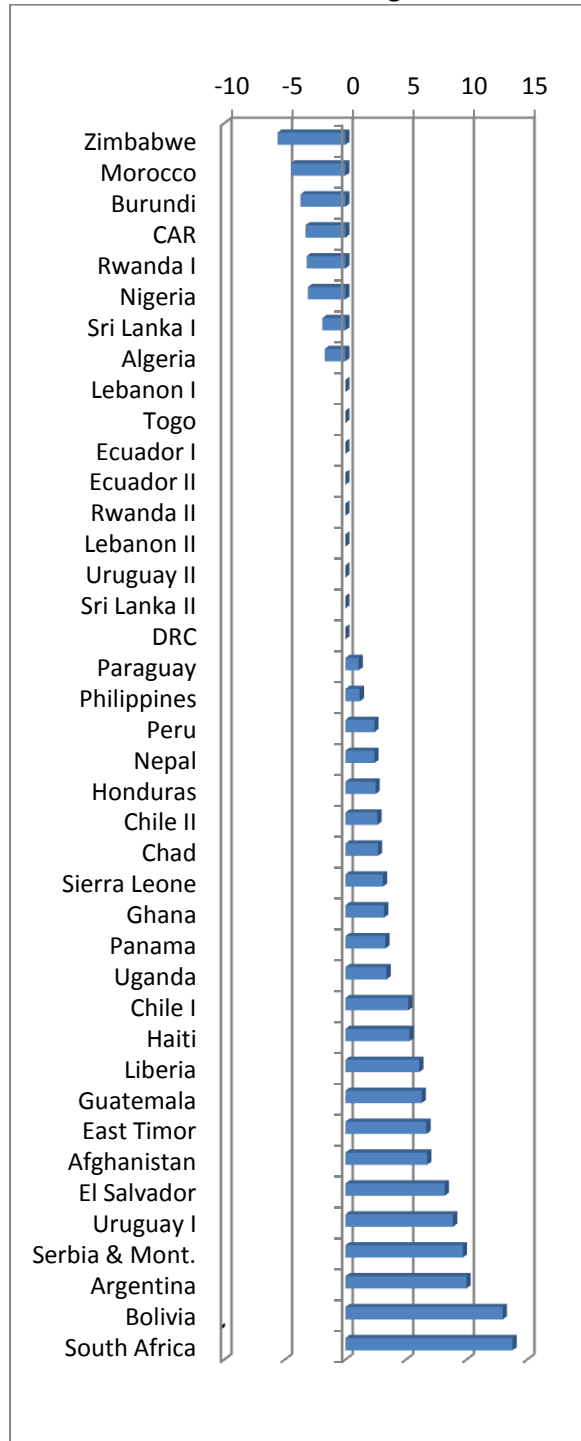
Table 4.6: Change in Means for Rule of Law Five Years After the TRC or the End of the Conflict

	TRC Conducting States	States Not Conducting a TRC
Positive Change 0-5 Years After TRC or End of Conflict	57.5%	44.4%
No Change 0-5 Years After TRC or End of Conflict	22.5%	33.3%
Negative Change 0-5 Years After TRC or End of Conflict	20.0%	19.0%
No Data	0.0%	3.2%

Source: CIRI

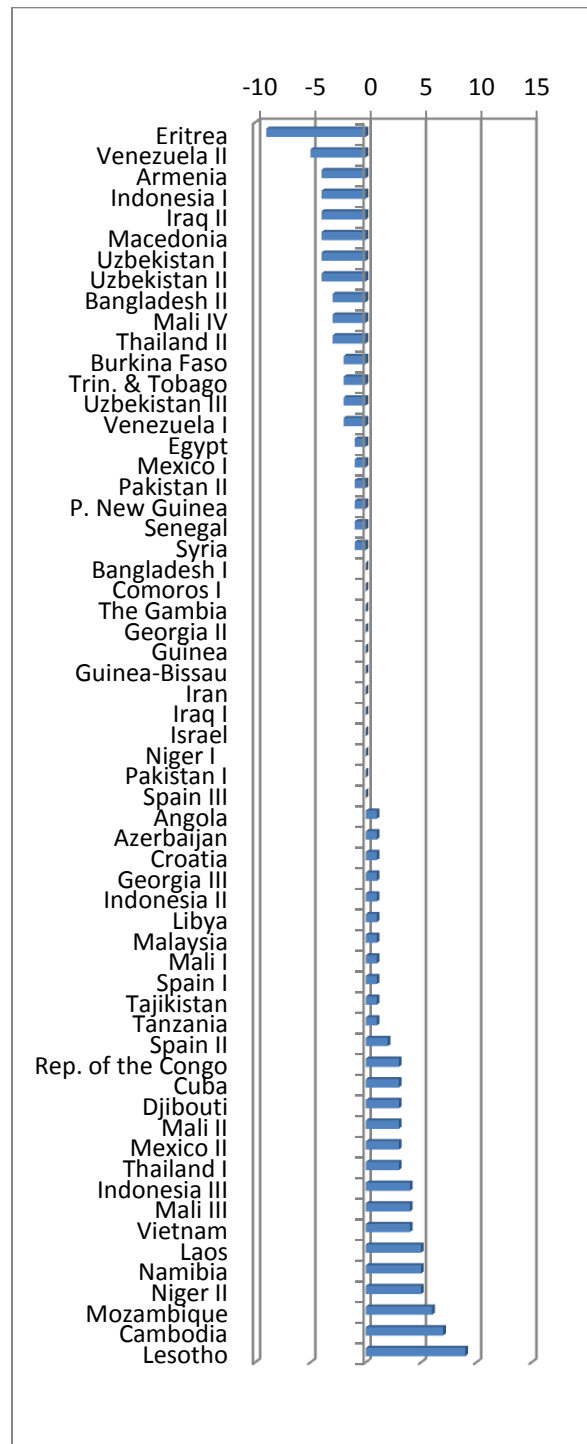
Below are Figure 4.3 and Figure 4.4 showing the distribution of those means among the states conducting a TRC and the group of states with conflicts that did not conduct a TRC. A discussion of the states experiencing the highest and lowest changes in rule of law scores and the effect of amnesties and the intensity of a conflict is included in the conclusions regarding democracy.

Figure 4.3: Mean Changes in Rule of Law After TRC for States Conducting a TRC ²¹



²¹ States with no data omitted from the figure.

Figure 4.4: Mean Changes in Rule of Law For Non-TRC States and a Violent Conflict ²²



²² States with no data omitted from the figure.

Lastly, a multivariate regression analysis was conducted regarding the relationship between some form of transitional justice and states conducting a TRC and states not conducting a TRC. In coding the independent variable of a TRC, years prior to a TRC or years in states without a TRC were coded with a zero, while years with a TRC or after a TRC were coded as a one. All states which had CIRI data were compared from 1981 to 2010. It is expected, based on a review of the literature, that states which utilized a TRC should have higher levels of rule of law than states that did not conduct a TRC. Expectations and the data regarding the variables of amnesty and cumulative intensity will be discussed below in the discussion on hypotheses five and six. Factors such as GDP per capita, population size and regional differences were not included for the same reasons they were excluded from the analysis of democracy.

A multivariate regression analysis was used to compare the independent variables of the use of a TRC, amnesty only, the use of a TRC and amnesty together, or none of the forms of transitional justice, along with the cumulative intensity of the conflict, to determine if the independent variables significantly predicted the level of democracy of a state. The results of the regression indicate there is a positive relationship between rule of law and TRC, with all of the variables included in this analysis explaining nearly 45% of the variance ($R^2=.447$, $F(297.901)$). They are significant at .000. See Table 4.7 below.

States in the group of states that had conflicts and did not utilize any of the transitional justice methods had average CIRI scores of 12.520 out of a possible 30 points, while states that conducted a TRC had CIRI scores 4.085 points higher. The difference was statistically significant at .000. This regression shows that states that used a TRC experience higher and statistically significant levels of rule of law as opposed to states without a TRC. This explanation of the variance, along with amnesty, a combination of TRC and amnesty, cumulative intensity and corrected Polity IV scores provide nearly one half, substantially better than the democracy variable did. It appears that TRCs may have a greater

effect on rule of law than on democracy, which is expected since much of the work of a TRC is related to providing at least a modicum of accountability and exposure of abuses that led to a conflict.

Table 4.7: Regression Analysis of TRCs, Amnesty, Cumulative Intensity and Rule of Law-TRC and non-TRC States

Model Summary^b

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.669	.448	.447	4.740

a. Predictors: (Constant) Corrected Polity IV score, Both TRC and Amnesty, Cumulative Intensity, TRCOnly, AmnestyOnly

b. Dependent variable: Total Rule of Law

ANOVA^a

Model		Sum of Squares	Df	Mean Square	F	Sig.
1	Regression	33468.973	5	6693.795	297.901	.000 *
	Residual	41209.670	1834	22.470		
	Total	74678.643	1839			

a. Dependent variable: Total Rule of Law

b. Predictors: (Constant) Corrected Polity IV score, Both TRC and Amnesty, Cumulative Intensity, TRCOnly, AmnestyOnly

Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficient	T	Sig.	Collinearity Statistics	
		B	Std. Error	Beta			Tolerance	VIF
1	(Constant)	12.520	.333		37.609	.000*		
	Cum. Intensity	-4.015	.263	-.273	-15.281	.000*	.942	1.062
	TRCOnly	4.085	.699	.114	5.842	.000*	.792	1.263
	AmnestyOnly	2.789	.379	.216	7.368	.000*	.351	2.848
	TRC and Amnesty	2.968	.380	.231	7.821	.000*	.344	2.910
	Corrected Polity IV Score	.562	.017	.568	32.226	.000*	.968	1.033

a. Dependent variable: Total Rule of Law

b. Predictors: (Constant) Corrected Polity IV score, Both TRC and Amnesty, Cumulative Intensity, TRCOnly, AmnestyOnly

Although the regression analysis appears to provide support for the hypothesis, other variables such as amnesties and cumulative intensity are included in the analysis and provide part of the explanation

for the difference in democracy scores between states that conduct a TRC and states that experience conflicts and do not conduct a TRC. The discussion regarding the relationship between these variables and rule of law is below.

Comparison of TRCs and Amnesties and Improvement in Rule of Law

The fifth hypothesis relates to the comparison of TRCs and amnesties and their relationship to improvements in rule of law. All cases in the group of states conducting a TRC and the group of states with conflicts that did not conduct a TRC are included and the unit of analysis is state/year. The independent variable is in the conduct of a TRC or an amnesty or both and the dependent variable is the CIRI rule of law score. It is expected, based on a review of the literature that states which utilized an amnesty should have lower levels of rule of law than states that did not. The hypothesis and data analysis are below.

Hypothesis Five: There is a greater change in rule of law in post conflict states that utilized a TRC as opposed to amnesties.

As discussed in Chapter Two, many authors state that states that conduct a TRC as compared to issuing an amnesty experience higher levels of rule of law after a conflict has ended. TRCs can promote rule of law by providing for accountability for perpetrators of abuse, spreading public knowledge of the actions of the previous regime, particularly those that were threats to physical integrity by exposing the killings, kidnappings, extrajudicial killings, and torture that occurred. It can also rebuild trust in government and the judicial system and empower groups. When amnesties are issued instead of a TRC being conducted, no record is made of the abuses and perpetrators are freed from any accountability reducing the ability to increase trust and reduce corruption.

To test this hypothesis CIRI data from all states conducting a TRC and from states not conducting a TRC but having experienced a conflict were compared to the same data from states that conducted a TRC and an amnesty and states that either just issued an amnesty or did neither an amnesty nor a TRC. Like with the discussion of democracy above, it is useful to examine the means of the individual states to see if there is a difference in means before the TRC or the end of the conflict and after. If TRCs have a positive impact on rule of law, states conducting a TRC and no amnesty should experience a higher mean rule of law score after the TRC than before. States issuing an amnesty should experience lower mean rule of law scores after the end of their conflicts. The same tests were conducted for rule of law as were conducted for democracy: an analysis of the means of all states before and five years after the TRC or end of the conflict and a multivariate regression analysis.

For the first test, the means of all states were calculated five years after the TRC or the end of the conflict and compared to the means to the beginning. Most amnesties are issued in an effort to bring closure to the violence and to allow the state to neutralize former rebels and their leaders by offering them amnesty from prosecution, usually within this five year period. States that conducted a TRC have positive changes in Polity IV scores over this five year period, but states that conducted a TRC and did not issue an amnesty experienced a lower percentage of positive scores (50.0%) compared to states that did issue an amnesty (63.6%). States that do not conduct a TRC had the lowest percentage of positive scores with states issuing an amnesty having slightly higher scores (45.2%) than states that did not issue an amnesty (40.6%). States that did not conduct a TRC also had a much higher percentage of negative scores with states not using any of the three methods of transitional justice having the highest percentage of negative scores (34.4%) and states issuing an amnesty having a slightly lower percentage (32.3%)

Unlike with the democracy scores where states that used neither a TRC nor an amnesty experienced the most positive changes in scores, states that conduct a TRC and issue an amnesty

experience the highest percentage of positive changes. However, states that use a TRC and issue an amnesty also had the highest percentage of negative changes in CIRI scores with 36.4% of state experiencing negative changes in CIRI scores. The states experiencing the lowest percentage of changes in CIRI scores were states that did not conduct a TRC but did issue an amnesty. See Table 4.8 below. Unlike with the democracy test of means, the differences here is statistically significant at .036. This may be because amnesties are more related to the rule of law than democracies.

Table 4.8: Changes in Means for Rule of Law Five Years after the TRC and or the End of the Conflict for States Issuing or not Issuing an Amnesty

	Conducted a TRC-No Amnesty	Conducted a TRC-Amnesty	Did Not Conduct a TRC-No Amnesty	Did Not Conduct a TRC-Amnesty
Positive change 0-5 years After TRC or End of Conflict	50.0%	63.6%	43.8%	40.6%
No Change 0-5 Years After TRC or End of Conflict	27.8%	18.2%	18.8%	19.4%
Negative Change 0-5 Years After TRC or End of Conflict	22.2%	18.2%	34.4%	32.3%
No Data	0.0%	0.0%	3.1%	6.3%

Source: CIRI

The last test was a multivariate analysis that was conducted regarding the relationship between amnesties and CIRI scores and is set forth above in Table 4.7. The dependent variable of amnesty alone is positively related to the CIRI rule of law scores with a score of 2.789 and the relationship is statistically significant. The variable of amnesty coupled with a TRC is also positively related to the rule of law with a score of 2.968 and the relationship is also statistically significant. The relationship is not as strong as the independent variable of TRC only which had a score of 4.085 as discussed above regarding Hypothesis Four.

This is consistent with the means tests above which showed that states that utilized a TRC or an amnesty or both a TRC and an amnesty experienced higher positive scores that states which used none

of the methods of transitional justice. However, it is not consistent with the means tests which show that states that conducted a TRC and issued an amnesty experienced the highest mean rule of law scores. The regression analysis illustrates there is a higher positive relationship between TRCs and rule of law than amnesties. The differences may be related to the different types of amnesties issued. It may also be a reflection of the fact that, as noted with regard to Hypothesis Two, attitudes towards amnesties may change for the positive over time, particularly if a state does not return to a violent conflict. Because the regression analysis does not reflect this change over time, this could partially explain these differences.

The variable of the combination of conducting a TRC and issuing an amnesty was also examined in this regression and that variable is statistically significant with a positive score of 2.968. This is consistent with the test of means over the five year period show showed states that conducted a TRC and issued an amnesty had the highest percentage of states experiencing positive changes in rule of law scores although the regression analysis shows that states that just conduct a TRC experience higher rule of law scores. Both the test of means and the regression analysis show improvement in rule of law scores occurs whether states issue an amnesty or not.

The Effect of the Intensity of the Conflict on Rule of Law Scores

The sixth hypothesis relates to the effect of the intensity of a conflict on rule of law. All cases in the group of states conducting a TRC and the group of states with a conflict that did not conduct a TRC are included and the unit of analysis is state/year. The independent variable is the level of intensity of a conflict and the dependent variable is the CIRI rule of law score. It is expected, based on the literature, that states that had intense conflicts and conducted a TRC would experience higher rule of law scores than states with intense conflicts who do not conduct a TRC. The hypothesis and data analysis are below.

Hypothesis Six: States that experience intense conflicts with cumulative battle deaths in excess of one thousand and conduct a TRC experience higher rule of law scores than states with intense conflicts who do not conduct a TRC.

As discussed in Chapter Two, authors argue that states that experience an intense conflict and conduct a TRC experience higher rule of law scores than states that do not. The rationale for the relationship is the same as the rationale for the relationship between democracy and cumulative intensity.

To test this hypothesis CIRI rule of law data from all states conducting a TRC were compared to all states not conducting a TRC, with cumulative intensity as the independent variable and CIRI rule of law score as the dependent variable. Like with the previous hypotheses, it is useful to examine the means of the rule of law scores of the various states to determine if there is a difference in means before the TRC or the end of the conflict and after the TRC or end of the conflict. In this hypothesis states fall into two groups: states that conducted a TRC and had intense conflicts and states that did not conduct a TRC and had intense conflicts. The same tests of means and multivariate regression analysis were conducted for these groups of states.

The first analysis examines the mean of all states five years after the TRC or end of the conflict. Data regarding that analysis are shown below in Table 4.9. over the first five years states that conduct a TRC have a greater level of positive change in CIRI rule of law scores (52.0%) as compared to states that do not conduct a TRC (21.9%). However, states that conducted a TRC were more likely to have either a negative change (36.0%) than states that did not conduct a TRC (18.8%). See Table 4.9 below. The difference between the two groups was not statistically significant, however.

Table 4.9: Comparison of Changes in Rule of law in TRC States and in States not Conducting a TRC Five Years After an Intense Conflict

	TRC State and Intense Conflict	Non-TRC State and Intense Conflict
Positive change 0-5 years After TRC or End of Conflict	52.0%	21.9%
No Change 0-5 Years After TRC or End of Conflict	12.0%	59.4%
Negative Change 0-5 Years After TRC or End of Conflict	36.0%	18.8%
No Data	0.0%	0.0%

Source: CIRI, PRIO

Finally a multivariate regression analysis was conducted regarding the effect of cumulative intensity on rule of law. Table 4.7 above shows the analysis that was conducted regarding the relationship between the independent variable of cumulative intensity and the dependent variable of CIRI rule of law score. Like with democracy, intense conflicts are negatively related to CIRI rule of law scores, but the relationship is much greater with a score of -4.105 for rule of law, compared to -1.672 for the democracy variable. The relationship is statistically significant at .000. This is consistent with the expectation that more intense conflicts would result in lower CIRI rule of law scores and, coupled with the robust score for TRCs and rule of law, is consistent with the hypothesis.

The Effect of Corrected Polity IV Democracy Score on Rule of Law

The last independent variable included in the multivariate regression analysis was the corrected Polity IV democracy score. It is expected that states with higher Polity IV democracy scores that conduct a TRC would experience higher rule of law scores. One explanation for this relationship may be that many states choose a TRC as a transitional justice method because they are making a general movement toward democracy at the same time as the TRC.²³ The corrected Polity IV score, which is significant and has an effect on the rule of law scores shows that for every one point increase in Polity

²³ No states that were democracies at the time of the TRC are included in this study other than South Africa and Ghana as explained in Chapter Three.

IV score there is a .562 increase in the rule of law score. See Table 4.7 above for the regression analysis that shows this relationship. This reflects the fact that although rule of law and democracy are related, they are measuring other things as well. In the case of rule of law, the factors involving empowerment, judicial independence and women's rights would clearly be related to democracy, but the physical integrity factors would not normally be part of an index of factors for democracy, making the two measures different. A state with a higher level of democracy would have an increased level of rule of law, but it is not equal. If democracy and rule of law were perfectly related there would be a 1.5 point increase in rule of law for every point increase in democracy since Polity IV is on a 21 point scale and CIRI is on a 30 point scale. Instead of 1.5 the gain is only .562, showing that although they are related they are still reflecting other factors.

Conclusions Regarding the Relationship Between TRCs and Rule of Law

TRCs are positively related to improvements in rule of law in states after conflicts and have a greater impact than amnesties or the combination of amnesties and TRCs. This remains true even if the conflict is intense, although intense conflicts have a greater negative effect on rule of law scores than on democracy scores where cumulative intensity is not statistically significant as a variable. The comparison of means to the multivariate regression analysis shows similar findings for both tests.

There is a difference in states regarding their experience in gains in rule of law than in democracy. Bolivia (1982) had a large increase for both democracy and rule of law, but South Africa (1995) had the greatest improvement, from 9 to 23, of all states that conducted a TRC. South Africa's improvement for democracy, by comparison, was only 4 points. As noted in the discussion of democracy, Bolivia is a state that conducted its TRC twenty eight years ago, before best practices for TRCs were established, but was able to achieve substantial increases in both democracy and rule of law within a five year period. It is possible that Bolivia's choice to conduct war crimes trials in addition to

the TRC improved their democracy and rule of law scores. There may also be other factors not considered here that contributed to their improvement.

South Africa's improvement in rule of law is easier to explain. Its TRC was started in 1995, after best practices were established and is the most commented on TRC in the literature. Although South Africa made improvements in all the rule of law categories, the greatest improvements occurred in the area of empowerment where rights such as freedom of speech and assembly were extended to the black population after the end of apartheid (CIRI-South Africa). South Africa also received considerable international support for the improvement of these empowerment rights. South Africa is probably best known, however, for its controversial amnesty program in its TRC which allowed perpetrators to receive amnesty if they appeared at the TRC and admitted to their actions (Gibson, 2005, 324).

In the group of states that did not conduct a TRC and had a violent conflict, the states with the greatest improvement in democracy scores were states that had conflicts from 1997 to present day. The highest improvements in scores were for Lesotho (1998) and Cambodia (1998). Despite having not used a TRC these states had improvements similar to those of the highest performing states that conducted a TRC, with Lesotho experiencing a 9 point increase, and Cambodia a 7 point increase.

Lesotho's violent conflict in 1998 was caused by allegations of fraudulent elections and the inability of the winning party to control the state after the election. Lesotho had experienced several suspect elections during its history, including an election with the results overturned by the courts and a second election where the losing party refused to leave office. After an intervention by South Africa and Botswana peace was restored and the electoral system was amended to provide for broader representative for groups in Lesotho (Southall, 2003, 274). Lesotho improved in both physical integrity and empowerment rights after the intervention and amendment to the electoral and their rule of law scores have remained high since 1998. Cambodia had been involved in a twenty year civil war that ended in 1998 with the election of a coalition government following a coup against the prime minister

(Freedom in the World-2013-Cambodia). Most of the improvement in rule of law scores for Cambodia relate to the improvement of empowerment rights such as freedom of speech and association while physical integrity rights have remained lower. While Cambodia did see a substantial increase in their rule of law scores between 1998 and 2004, since 2005 their scores have deteriorated due to decreasing physical integrity and empowerment scores (CIRI-Cambodia). Both Lesotho and Cambodia also experienced improvements in democracy after their conflicts but were not the states with the largest improvements.

Cambodia issued a blanket amnesty for all Khmer Rouge leaders and for all crimes committed during the civil war. However, in 1997 the Extraordinary Chamber for the Courts of Cambodia (ECCC) was created to try five Khmer Rouge leaders for war crimes committed despite the amnesty. The law establishing the ECCC required that the ECCC not issue an amnesty or pardon and left the issue of the previous amnesty to be decided by the court (ECCC Laws on the Establishment, 2001). Lesotho did not issue an amnesty around the time of the coup attempt in 1998 but an amnesty was granted in 2007.

The state experiencing the greatest negative change in democracy was Eritrea (2008) with rule of law scores deteriorating from a thirteen to a four. Eritrea achieved independence from Ethiopia in 1991 and its leader was chosen in 1991 by a transitional government. In 2008 Eritrea had a conflict with Djibouti which was resolved. To date Eritrea has not held a national election and repression of empowerment rights have continued from 2001 to date. Physical integrity rights have also continued to deteriorate (Freedom House-2013-Eritrea). Because the reason for the deterioration of rule of law relate to repression of rights related to independence and the authoritarian government a TRC might help Eritrea once the current government leaves office, but until then would probably not be of assistance in improving rule of law.

Armenia (1994), the state with the one of the lowest democracy scores, also has negative rule of law scores with a -4. Armenia's physical integrity scores have remained fairly high, with a six out of a

possible eight points, but their scores for empowerment rights continue to deteriorate. The deterioration is probably due to continued electoral conflicts within the state. Armenia could be a state that would benefit from a TRC which could explore the electoral violence and subsequent government repression. Azerbaijan (1995), the other state with the highest negative scores in democracy, had a positive score in rule of law over this five year period but its rule of law scores have deteriorated since 2002 as more disputes with the Armenian portion of the population have occurred (Freedom House-2013-Azerbaijan). Like Armenia, Azerbaijan could benefit from a TRC to address the ethnic issues that lead to continued repression. Neither Eritrea nor Armenia has issued amnesties (Transitional Justice Database-Eritrea, Armenia).

Both the test of means and the regression show that states that conduct a TRC experience higher rule of law scores than states that do not conduct them. This improvement in rule of law scores occurs whether states issue an amnesty or have an intense conflict. According to the regression analysis, all of the factors are significant and TRCs have the highest impact with a positive score of 4.085. Like with democracy, the conduct of a TRC has a robust and positive relationship with rule of law. This is consistent with the test of means which shows over 13% of states conducting a TRC experience higher rule of law scores than states without a TRC.

Finally, unlike for democracy where all of the independent variables only provided 3.0% of the explanation for democracy, the variables for rule of law are all statistically significant and provide almost 45% of the explanation. For states considering a TRC to affect an increase in rule of law this is a positive result. Both the test of means and the regression show that states that conduct a TRC experience higher rule of law scores than states that do not conduct them. This improvement in rule of law scores occurs whether states issue an amnesty or have an intense conflict.

CHAPTER FIVE: LIBERIA AND THE STRUGGLE TO FIND BALANCE

The people of Liberia suffered through two of the worst civil wars in modern times from 1989 to 1996 and from 1999 to 2003, with over 250,000 deaths and over a million Liberians becoming internally displaced, out of a population of less than four million. During the wars, several hundred thousand Liberians also fled Liberia to neighboring countries and to the West to escape the violence, destabilizing the neighboring countries with the influx of refugees. The violence in Liberia was not confined to soldiers and rebel forces; most civilians suffered as well, with children forced to become soldiers being particularly impacted. Children as young as six were forced to become soldiers and in many cases were forced into sexual slavery, prostitution, drug use, cannibalism and torture (TRC of Liberia-Preliminary Report, 44). Twenty eight per cent of the violations the violations reported to the TRC conducted from 2005 to 2009 were committed against women, a number that probably underestimates the true extent of gender-based violence due to the historically unreported nature of rape and sexual abuse (TRC of Liberia-Preliminary Report, 44-45). The country was also economically devastated with many businesses damaged, foreign concerns nationalized and exploited for personal gain by President Taylor (1997-2003), much of the infrastructure damaged or destroyed and the youngest part of the population suffering from stunted growth brought on by malnutrition caused by the interruptions in agricultural output.

Liberia emerged from the second civil war in 2003 in horrific condition, with its governmental institutions, infrastructure and judicial systems in tatters and as one of the poorest countries in the world. It also had extremely high levels of unemployment, infectious diseases, child malnutrition, and a low life expectancy (CIA World Fact Book-Liberia). More critically, it needed the largest United Nations (UN) peacekeeping mission in the world to keep the peace and bring security to the country, with over fifteen thousand military personnel and over one thousand police officers being sent to Liberia by the UN in 2003 (Security Council Resolution 1509, 2003). The effects of the war have not ended yet; forty

two percent of the population remained malnourished in 2011 and both infants and pregnant women suffer very high rates of anemia (Poverty Reduction Strategy Final Report 2008-2011, 30). In 2012 was Liberia was 182th out of 187 countries in the world in human development, illustrating the long-lasting impacts of the war (Report on the Situation of Infant and Small Child Feeding in Liberia).

This case study of the Liberian TRC will analyze the questions of whether the TRC has aided Liberia in making the transition to democracy it has been attempting since 2003 and whether it is leading to improvements in the rule of law. There are several conclusions regarding the relationship between the Liberian TRC and democracy that are reached in this case study. The first conclusion is that in the case of Liberia there does not appear to be a clear relationship between the TRC and the growth of democracy, with most improvements in democracy occurring before the TRC in 2006. Second, there have been some improvements in the rule of law in Liberia, particularly in terms of improvements in corruption and physical integrity, but like with democracy the relationship with the TRC is unclear. Lastly, although there have been improvements in the rule of law since the end of the civil war, the failure to lustrate or prosecute perpetrators of the worst abusers during the civil war has limited accountability and the rule of law in Liberia.

In order to determine the relationship between the Liberian TRC and democracy and rule of law, this case study of Liberia reviews the political history of Liberia, particularly the history that relates to the ongoing ethnic division between the indigenous population and the Americo-Liberians who trace their ancestry to freed slaves brought to Liberia (or in later cases who traveled voluntarily to Liberia) to establish a free state. This ethnic division has persisted since the beginning migration of freed slaves and has impacted the ability of Liberia to both make the transition to democracy and to establish the rule of law. This case study then looks at the TRC conducted in Liberia which was designed, in part, to bring about democracy and the rule of law and analyzes the TRC's effectiveness in achieving these objectives. It also describes and considers the impact of the *de facto* amnesty for alleged war criminals

on democracy and the rule of law. The next chapter, a case study of Mozambique, will compare the findings in Liberia to Mozambique, a state that did not utilize a TRC but did use extensive amnesties, to compare and contrast the two states relative movement toward democracy and the rule of law.

Background-Liberia

Liberia is a West African nation slightly larger in size than Tennessee. It is a small country, with a population in 2013 of almost four million people. Most of its population is African, with tiny minority populations of Syrians and Lebanese residents who are not citizens but are doing business in the country, plus a few groups tracing their origins back to Barbados and the United States. Most Liberians are Christians, with a minority population of Muslims (approximately 12%) and a small number of indigenous religions. Liberia has a long coastline and claims territorial jurisdiction out to two hundred nautical miles. Despite its long coastline, farming is the most common occupation because of the cost involved in commercial fishing (CIA World Factbook-Liberia). Life expectancy is only 57.41 years, one of the lowest in the world. Unlike many other parts of Sub-Saharan Africa, like Botswana and South Africa, this is not due to its HIV/AIDS rate which is only 1.5%, but is due to the risk of exposure to infectious disease, including malaria, hepatitis, yellow fever and rabies. Only 4% of the rural population and 25% of urban dwellers have access to sanitation, exacerbating health issues. Over 20% of children under the age of five are underweight and infant and maternal death rates are high (CIA World Factbook-Liberia). There are limited medical facilities and Liberia has only one licensed psychiatrist for the entire country, although the Ministry of Health is attempting to train psychiatric nurses and assistants (voanews.com). Unemployment in Liberia is reported at 85%, the third highest rate in the world and 80% of the population are reported to live below the poverty line with many employed in the informal sector of petty trading to make enough money to feed their families. Liberia's GDP per capita of \$700 is the fifth

lowest in the world (CIA World Factbook-Liberia).²⁴ However, Liberia's economy is growing at a fast 9% per year as of 2012, indicating that current poverty and unemployment rates may actually be lower than reported (indexmundi.com).

Liberia is currently peaceful and has undergone two elections, one in 2005 and a second in 2011, since the peace agreement was signed. Despite allegations of fraud made by the losing party in both elections and a boycott by the rival Congress for Democratic Change (CDC) party of the runoff election in 2011, international observers believe both elections were relatively free and fair. The first elected African female head of state, Ellen Johnson Sirleaf, of the Unity Party, was elected in 2005 and re-elected in 2011. There was some sporadic violence after the election results were announced in 2011, with one death and the burning of some party property, as well as demonstrations and protests before the run-off election which resulted in injuries and unconfirmed deaths, but the violence was limited (Akam and Schmall, 2011). As of 2012 the United Nations (UN) maintains approximately nine thousand armed personnel and another fifteen hundred volunteers and civilian personnel (Security Council Resolution 2066, 2012).

History of the Conflict

Prior to the American intervention in Liberia in 1822 Liberia was settled by a variety of ethnic groups from the surrounding areas, including groups from modern day Guinea, Sierra Leone and Côte d'Ivoire. This diverse settlement is reflected in modern day Liberian demographics: there are at least twenty eight ethnic groups according to the CIA World Fact Book, including the Kpelle 20.3%, Bassa 13.4%, Grebo 10%, Gio 8%, Mano 7.9%, Kru 6%, Lorma 5.1%, Kissi 4.8% and the Gola 4.4% (CIA World Fact Book-Liberia). About 2.5% of the population is Americo-Liberia, or descendants of American slaves brought to Liberia from the United States. There are also some non-Liberian tribal groups including the

²⁴ These figures are somewhat misleading since it has not been updated since 2000 for poverty and since 2003 for unemployment, both while the second civil war was still in progress.

Mandingo who are Muslim traders and the *Fanti* fisherman who are from Ghana and two non-African groups made up of Syrians and Lebanese who mainly trade and run businesses in Liberia (Ethnic-Groups Liberia).

Due to its location on the coast of West Africa Liberia was the subject of early European exploration, including from early Spanish in the thirteenth century, Normans in the fourteenth century and Portuguese in the fifteenth century. None of these groups settled or colonized Liberia, however, although later Portuguese and British groups took slaves as part of the Atlantic slave trade. Later exploration by the Dutch, French and Swedes resulted in more trade, but not colonization (Massachusetts Colonization Society, 1831).

Interest in colonizing Liberia began It after the slave uprising in Santo Domingo in 1791. Groups became concerned about the possibility of a slave uprising in the United States and the American Colonization Society (ACS) was formed by American slaveholders and Quakers for the purpose of returning free blacks to Africa to quell the possibility of revolt. In 1820 the ACS sent its first group of free blacks to Liberia and purchased land to build a colony first in Sierra Leone, and then in Liberia when it was determined Sierra Leone was too “unhealthy” for the new settlers. Cape Mersurado was forcibly purchased in the area of modern Monrovia from the local king and after a period of turmoil within the group, the colony was successfully established. Groups other than the ACS also sent free blacks to Liberia to lessen their political and social impact in the United States. The colony was originally ruled by appointees by the ACS but eventually appointed a black governor from among the settlers. In 1846 the colony declared its independence. After the American Civil War some freed slaves moved to Liberia along with some immigrants from Barbados (American Memory from the Library of Congress).

The importation of free blacks from the United States and Barbados set up a two tiered system of political and social rights within the new country of Liberia. Immigrants felt themselves superior to the indigenous population and the same segregation methods used against blacks in the United States

were used to keep the Liberian indigenous populations in a lower class. All of the early presidents of Liberia were born in the United States, with Hilary Richard Wright Johnson (1884-1892) being the first Liberian born president, although both of his parents were born in the United States. President Arthur Barclay (1904-1912) was the last president to be born outside of Liberia; he was born in Barbados. Regardless of place of birth, all presidents of Liberia were Americo-Liberians until Samuel K. Doe became president in 1980 after a coup d'état conducted against President William R. Tolbert, Jr. Moses Blah, who completed Charles Taylor's 2003 presidential term, was the second indigenous president (Liberiapastandpresent.org).

This continual marginalization of the vast majority of the population by a tiny minority created problems for Liberia that persist today. Dennis (2008), himself Liberian and a social psychologist, explains this marginalization as a process whereby free blacks, rejected and without status in their own country of the United States, but also rejected by the indigenous population and Liberia, did not fit into either the white or black world and therefore came to reform and reinvent Liberia into an American African country, not to become part of the country. They were able to retain power only by virtue of being placed in power by white colonial powers and by dint of receiving foreign loans and the assistance of Christian organizations (11).

This power continued throughout the history of Liberia, with the Americo-Liberians staying in power through their control of the political process, schools and jobs. Only Americo-Liberians were accepted into the True Whig Party, the ruling party of Liberia from 1878 to the coup in 1980. Non-Americo-Liberians were not allowed to work in government or in the military until the 1970's and weren't even recognized as citizens until 1904. Education, infrastructure and services were not extended into the non-coastal areas of Liberia, where most indigenous Liberians lived, until well into the twentieth century and there remains today a distinct imbalance between the inland areas and the coastal areas.

This difference in opportunities between the two groups continues to this day to be a source of conflict in Liberia and led, in part, to the civil wars. The Liberia Project, conducted by the Berkeley Human Rights Center in November and December of 2010 polled Liberians on their priorities and priorities the government should have and 69%, particularly in rural areas, cite education as the top priority for government (Berkeley Human Rights Center, 2011, 27). This reflects the perception of this continuing imbalance between the largely indigenous rural areas and Americo-Liberian urban areas. Many Liberians also cite the need for government to improve infrastructure (39%), access to health services (42%), and jobs (56%), while only 8% think the government should improve the rule of law and only 6% think it should strengthen justice. The most remote counties of Maryland and Grand Kru support infrastructure as a priority by 63% and 72% respectively (Human Rights Center, 2011, 28). The same problems caused by the inequality between the groups in the nineteenth century continue to this day in Liberia.

The Beginning of the Civil Wars

Prior to the coup d'état in 1980 by Samuel Doe, Liberia had had a succession of presidential elections and successful alternations of power when each elected president took office. However, first the Republican Party and then the True Whig Party were so dominant in Liberian politics that most elections until 1955 were single party elections, and the multi-party elections after 1955 saw the True Whig Party garner over 95% of the vote, making elections not really multi-party. For example, in the 1959 election, the losing independent candidate William O. Davies-Bright only earned a total of 55 votes out of 530,621 votes (Elections in Liberia).

After the coup in 1980 the first truly multi-party election occurred in 1985, which allowed parties from all ethnic groups to compete, but was won in the highly suspect election by Samuel Doe and the National Democratic Party of Liberia (NDPL). Doe had previously banned two candidates,

Baccus Mathews and Amos Sawyer from the election and imprisoned or detained a number of his opponents until after the election. He also removed all of the members of the elections commissions and replaced them with his associates. After it appeared he was losing the election he closed the counting and had the remaining ballots counted secretly, winning with a small margin (50.9%) to make it appear to be a fair election (Adebajo, 2002, 29). The NDPL also won twenty two out of twenty six seats in the parliament. The election results were supported by the United States, which also provided extensive financial aid to Liberia, as part of the general support for non-Communist states as part of the Cold War (pbs.org).

Doe's regime originally started out as a protest against Americo-Liberian rule but needed the cooperation of the Americo-Liberians to run the country due to his and his followers' lack of political or bureaucratic experience. As he ceded more power to the Americo-Liberians, his hold over Liberia was weakened and he was brutally executed in 1990 by Prince Johnson.²⁵ Both Johnson and Charles Taylor laid siege to Monrovia and most opponents of Taylor fled Liberia, including Amos Sawyer who was to become the interim president of Liberia after the death of Doe in 1990 to 1994. Sawyer was an educated man who went on to obtain a PhD from Northwestern University and teach in the United States after making an effort to confront and stop some of the worst abuses of the Doe regime as president. Sawyer was made the interim president as a compromise between the Economic Community of African States (ECOWAS) and the rebels, but was unable to control the country because much of Liberia was in the hands of Charles Taylor and Prince Johnson, leaving Sawyer able to control only the capital city of Monrovia (answers.com/Amos_Sawyer).

Unfortunately for Liberia, this led to the rise of Charles Taylor as president in 1997 after Sawyer stepped down in 1994 and after three years of upheaval. Charles Taylor was the son of an Americo-Liberian father and a mother who was a member of the Gola tribe. Despite his mixed heritage, Taylor

²⁵ Prince Johnson is currently a member of the Liberian Senate because he was a leader of one of the warring factions and committed the offenses of killing, extortion, massacre, destruction of property, force recruitment, assault, abduction, torture & forced labor, and rape. As of August of 2013 he is still a member of the Senate and no prosecution has been attempted.

was primarily aligned with the Americo-Liberians, having studied economics at Bentley College in the United States and being the president of a radical Liberian student group that demonstrated in the United States against President Tolbert in 1979. When he returned to Liberia he joined with Samuel Doe but fled Liberia in 1983 after allegations were made regarding embezzlement by Taylor. In 1989 he invaded Liberia from the Cote d'Ivoire and became involved in the civil war, supported by many Americo-Liberians, including at one point the current president of Liberia, Johnson-Sirleaf, in the conflict against president Doe. Taylor used his power to extract diamonds and other resources and to attack neighboring Sierra Leone and seize control of the country. Taylor was elected president in 1997 and his rule of Liberia was as destructive or more so than Doe's with the death and mutilation of thousands of people, embezzlement of large amounts of money, war crimes, use of child soldiers, and cannibalism (President Charles Ghankay Taylor).

Elections are not necessarily the solution to civil war and violence and Liberia's experience with Taylor after the election is an example of this. Taylor used his position immediately after the election to punish his former opponents in the civil war and strip the country of assets for his personal gain. He was able to use his position as president to benefit personally from foreign businesses doing business in Liberia, particularly the mineral industry (Sessay, Ukeje, Gbia and Ismail, 2009, 41-42). Taylor was considered an Americo-Liberian and favored people from that class initially, only to eventually use people from the Gio and Mano tribes along with soldiers from Burkina Faso. Taylor left Liberia in a political, cultural and economic shambles (43-44). When he left office in 2003 and went into exile and then into custody in the Hague, Liberia experienced a transitional government and then the elected government of President Johnson-Sirleaf. However, Sessay, Ukeje, Gbia and Ismail note that the current president and everyone who ran against her for office in 2005 and 2011, with the exception of George Weah who had no political experience (he was a professional soccer player), had extensive connections to the Americo-Liberian group that had ruled Liberia since its inception. For example, although

President Johnson-Sirleaf has both Americo-Liberian and indigenous parents, she was part of the ruling Americo-Liberian class, serving as a minister of the True Whig Party and fleeing Liberia in 1980 when Doe, the first non-Americo-Liberian, took office (47-48). This makes it difficult for groups other than Americo-Liberians to develop trust regarding the president's ability to reconcile groups in Liberia. This lack of trust impacts on the ability of the state to improve rule of law and the continued marginalization of the indigenous population of Liberia also affects the ability of the state to make the transition to democracy.

History of Liberian Democracy

Prior to the peace agreement in 2003 Liberia had never been a democracy and in fact during most of its history was virtually a one-party authoritarian state. Immediately after independence in 1846, although it was not a democracy Liberia had some aspects of democracy, with its executive having significant restraints from the legislature rather than from their own choice. During this time, although Liberia was under the control of the Americo-Liberian group, the executive was constrained. Political participation was restricted, primarily because only one group was allowed to vote and there was limited political competitiveness but there were some vestiges of democracy.

From 1884 to 1980 the constraints on the executive fell, with the power of the legislature becoming limited but still able to pass some legislation and limit some executive actions. It also had an independent judiciary and periodic attempts to change the rules of the game by changing constitutional provisions to provide for executive power were defeated. Liberia was a one-party state during the entire period and politics were dominated by the Americo-Liberians. Political participation by other groups was severely restricted but did exist for the ruling group. Although Liberia still had some of the aspects of a democracy, the emphasis on a strong executive and limited political participation kept it from becoming a consolidated democracy.

In 1980, with the coup d'état by Doe, executive restraint changed to unlimited authority, characterized by the ignorance of limitations in the constitution, suspension of constitutional provisions at the discretion of the executive, no legislature or one without any real power, no real measures of accountability, no power by the legislature over the executive and rule by decree. The same restrictions applied to political participation, but given the power of the executive, political participation was of less value. Participating by voting for a legislator or asking for the help of a legislator would have been of little value given the strength and almost total control of the executive. The power of the executive led to the repression of competitiveness and all opponents were dealt with harshly. Liberia moved from some aspects of democracy before 1980 to a fully autocratic state under Doe's regime (Polity IV-Liberia).

The first civil war ended in 1996 with the Abuja Peace Accords and in 1997 the country held national elections for the first time since 1985. The presidential election was won by Charles Taylor with 75% of the vote and the election was accepted as being somewhat legitimate by international observers, including the Carter Center. The Center "...concluded that the 1997 Liberia Special Elections must be assessed in the context of the broader peace process. Given the recent years of conflict and pervasive fear that Charles Taylor would return to war if not elected, many Liberians made a calculated choice that they hoped would promote peace and stability" (Observing the 1997 Liberian Special Elections Process in Liberia). The international peacekeepers withdrew from Liberia and most of the armed factions withdrew. Executive constraint improved slightly from the Doe administration, to an intermediate category showing some slight control by either the legislature or groups of the executive. Participation, however, was sectarian and the various groups within Liberia were unable to work together. Taylor continued to stress the ethnic barriers among the various ethnic groups and to favor his own tribal group, eliminating educated people and anyone who could challenge his rule. His regime also had a high level of factionalism, with ethnic backed political factions that ignored and repressed other groups and pursued their own agendas rather than common agendas. Taylor finally resigned as president of Liberia

in 2003, leaving his vice president to negotiate peace (Liberiapastandpresent.org). The judiciary remained weak under Taylor's rule and its independence was interfered with by the executive, leading to little judicial independence (Polity IV). The second civil war ended in 2003 and Ellen Johnson-Sirleaf was elected in 2005 in a free and fair election to serve as president. Legislative elections were also held. Although there were some slight improvements during President Taylor's regime, the lack of political participation and the continued strength of the Presidency kept Liberia an autocracy. At the time of the peace agreement and President Taylor's resignation in 2003 Liberia had made strides toward democracy which were completed by the successful election of President Johnson-Sirleaf in 2005. The Liberian TRC was negotiated and agreed upon by the government and two belligerent groups, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MDM) in the General Peace Agreement in 2003 to provide for peace and reconciliation and to bring about accountability for the human rights abuses and violations of the laws of war during the two civil wars.

The Decision to Conduct a TRC in Liberia

Liberia's TRC was ordered by the National Transitional Government of Liberia in an effort to bring closure to the problems from the two civil wars and years of ethnic and class conflict. Liberia turned to a TRC in 2005, rejecting calls for a war crimes tribunal similar to the one in neighboring Sierra Leone; as a result, the only Liberian to be tried for war crimes was the former president of Liberia, Charles Taylor, who was tried by the Special Court for Sierra Leone (SC-SL), not a Liberian court only for offenses that occurred in Sierra Leone (Mandate Special Court for Sierra Leone).

The 2005 peace agreement stated that the TRC was being conducted to address impunity and to allow victims and perpetrators to share experiences and promote healing and reconciliation. The TRC was organized to explore the causes of the civil wars and provide restitution for victims of the war (Article XIII Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL)

and Political Parties). It began its proceedings in 2006 and ended in 2009. Although the international community had an influence on the TRC, providing funding and through the International Technical Advisory Committee (ITAC) assistance with implementing the mandate, the TRC was primarily domestic with nine Liberian commissioners of diverse professional and regional backgrounds were chosen by the transitional commissioner, including four women, who were given the responsibility to conduct hearings and prepare a report regarding violations of human rights and international humanitarian law from 1979 to 2003 in Liberia (Institute of Peace-Truth Commission-Liberia).

Liberia's TRC was mandated to make recommendations that would promote peace, justice and reconciliation in Liberia, not specifically to improve democracy. However, the goals of the TRC to bridge the gap between the Americo-Liberians and indigenous population and to provide for accountability for abuses are related to democracy. The final report was issued in 2009 and included widely publicized recommendations for prosecution and for lustration, both of which were highly controversial. Two commissioners refused to sign the final report in protest of those two recommendations. The TRC's recommendations have remained unpopular in Liberia among the groups involved in the war and generally in government, particularly the lustration provisions (James-Allen, Weah and Goodfriend, 2010, 7-10). The TRC's recommendations to the government of Liberia in their final report show an attempt to promote democracy on the part of the TRC but the question that remains is how the TRC promotes democracy.

Liberia's TRC, conducted eleven years after the well-known South African TRC, was different from South Africa's in its design; there was no effort to provide an amnesty for offenders who came forward to provide testimony during public hearings and confessed to human rights abuses and violations of the law. In fact the Liberian TRC recommended prosecution and lustration of a large numbers of Liberians it concluded had committed crimes during the civil war. The TRC provided a certain amount of due process by conducting public hearings, a publicly released report and widespread

dissemination of the report, allowing the population to be aware of its findings and recommendations and is therefore, a good example of a state conducted TRC that satisfies criticisms of the lack of due process of earlier TRCs and the fact of amnesty for offenders in the South African TRC.

However, one constraint on the effect of the TRC on democracy is the fact that the principal recommendations regarding lustration and prosecution were never implemented. One of the major controversies from the TRC was the recommendation regarding lustration for certain political figures, including the current president, Ellen Johnson-Sirleaf for a period of thirty years (Final Report of TRC, 14.3). The failure of Johnson-Sirleaf to either resign or adopt the recommendation and order the lustration of other political figures may have reduced confidence in the government.

In addition to the president, the TRC report also recommended the prosecution of over one-hundred leaders of warring factions and perpetrators of the egregious violations including Prince Johnson, current senator in the Liberian Senate (Final Report of TRC, Annex 3). Not only was Prince Johnson not prosecuted, he finished third in the 2011 presidential election (Lean and Gerring, 2012). To date, there have been no prosecutions of offenders in the civil wars, domestic or international, other than Charles Taylor who was prosecuted as a result of the SC-SL and international pressure rather than from the efforts of Liberia. Sierra Leone, which was involved in many of the same events as Liberia, prosecuted eleven Sierra Leoneans in addition to the Liberian Charles Taylor, including members of two rebel groups and one group that supported the Sierra Leonean government in the war. Three of the defendants died during the trial but eight, plus Charles Taylor, were convicted of various war crimes (Special Court for Sierra Leone, Fourth Annual Report and Ninth Annual Report).

In 2012 a member of Liberia's House of Representatives proposed a bill to have a war crimes court in Liberia to prosecute people bearing the greatest responsibility for serious violations of international humanitarian law and Liberian law committed since December, 1989 but as of 2013 no action had occurred on the bill (Twenty-fourth progress report of the Secretary-General on the United

Nations Mission in Liberia-S/2012/641). Human Rights Watch has issued a briefing paper suggesting that a war crimes tribunal similar to the Sierra Leonean one might be set up by the Security Council, but that has not yet occurred (Human Rights Watch, 2009, 1).

Measures of Democracy in Liberia

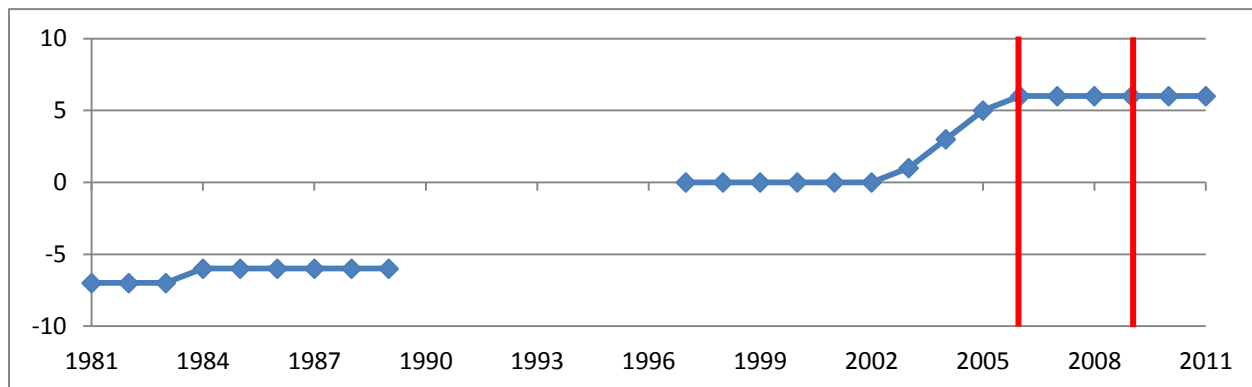
This section utilizes the detailed country report data from Polity IV and the explanation of the various numerical scores from 1847 to 2012 to examine the evidence of democracy in Liberia. Polity IV data discussed in Chapter Three and Four in the context of the data for the cross national analysis is also available historically for individual states (Polity IV-Liberia). Additionally election data and data from field research conducted by the author in 2011 in Liberia will be utilized.

Polity IV's analysis of democracy goes back to 1847 for Liberia, the year it declared its independence. Liberia had never been a democracy during its history until 2006, according to Polity IV and from 1884 to 1980, the year of the coup, had scores from a -4 to a -6, making it considered a profoundly authoritarian state. Its scores from 1981 to 2012 are shown below in Figure 5.1 and reflect the turmoil of the two civil wars and Doe's reign followed by the slow recovery with the peace agreement in 2003 to 2012. From 1884 to 1980 the constraints on the executive fell from a seven to a three, indicating slight to moderate limitations on executive authority. This indicates a time when the power of the legislature was limited but they are able to pass some legislation and limit some executive actions, there is an independent judiciary and attempts to change the rules of the game by changing constitutional provisions to provide for executive power were defeated.

Liberia scored a 1, making it slightly more democratic than authoritarian in 2003 and since has progressed to a score of 6, showing the country to be considered democratic, although not fully consolidated. The improvement from a -6 to a zero that occurred in 1990 reflects the relative stability of Amos Sawyer's presidency from 1990 to 1994 and the election in 1997 of Charles Taylor which was

assessed as a passable election, particularly as compared to Doe's take over by force previously (The Democracy Project, 1997, 7). Liberia had begun the movement toward democracy shortly after the end of the second civil war in 2003 and reached a positive six the same year as the commencement of the TRC. Its Polity IV score has been stable at positive six since 2006, showing no change in democracy from end of the TRC in 2009 to 2012. See Figure 5.1 below.

Figure 5.1: Polity IV scores for Liberia-1981-2012.
Lines show the beginning and end of the TRC ²⁶



Source: Polity IV-Liberia

The Relationship Between the TRC and Democracy in Liberia

This section on democracy will explore the goals set out in the TRC final report and their effect on democracy in Liberia, looking at the Polity IV index in more detail for Liberia along with survey data from the Human Rights Center of the University of California at Berkeley on Liberian responses to the TRC and efforts toward democratization. Brahm (2010) suggested five phenomenon that link TRCs to improvements in democracy. They are: 1) they contribute to the loss of authoritarian power and help to create democratic alternatives by identifying problems and recommending institutional changes that promote accountability and increase civilian control over the military, 2) they allow several divergent

²⁶ Data for 1990-1996 is not available.

groups to be heard regarding their concerns, 3) they are often created as part of a general movement within a state to democratic values, 4) they assist in the removal of enclaves of non-democratic power by naming names of perpetrators (or at least exposing their actions (23), and 5) they contribute to stability and the growth of democracy by “(re)building a sense of shared destiny among groups giving them a stake in the ‘national project’ and through shaming perpetrators, thereby depriving them of support that might otherwise encourage them to protect their interests through extra-constitutional means” (23-24).

All five of Brahm’s phenomenon appear to at least have been goals of the Liberian TRC recommendation although they were achieved to greater or lesser extent in places and in others may still be desires that were not accomplished by the TRC. First, the TRC recommended that military and civil service personnel not be allowed to campaign for candidates or be members of political parties to lessen their influence over the various parties (18.1). This was not carried out. They also recommended the creation of the Independent National Human Rights Commission (INHRC) to insure accountability and to promote human rights (18.7) and that people holding public office in Liberia be free from corruption, competent and have a good human rights record (18.10). The INHRC was created but has been ineffective due to its inability to enforce the two provisions in the TRC final report calling for lustration and criminal prosecution. This aspect of the TRC recommendations would assist with promoting accountability and lessening of authoritarian power.

Second, the TRC recommended construction of a political culture that would be tolerant of all groups, including opposition political groups (18.1), women (18.5), children (18.6) and the poor (18.9.1). The commission not only recommended tolerance but also that civil society be used to give a voice to those groups, including public funding for political parties (18.2). The TRC itself conducted hearings throughout the country and in several places in the world which allowed various groups to be heard. The recommendations bring together a variety of groups to be involved in the future of Liberia,

particularly women's groups and also tries to address the class differences between the Americo-Liberians and the indigenous groups.

Third, the TRC was created as part of the general movement toward democracy in Liberia. It was made part of the negotiations in the peace agreement and Liberia, according to Polity IV, had started a movement toward democracy with the signing of the peace agreement in 2003 and become a democracy in 2006 after its successful election in 2005. The TRC started its work in 2006 and was part of this general movement toward democracy and reflects a commitment on Liberia's part toward democracy and away from its authoritarian past.

Fourth, because the Liberian TRC named names of perpetrators and recommended prosecution and lustration, the fourth and fifth goals were clearly intended by the Liberian TRC although not realized by the TRC. The failure to prosecute and lustrate perpetrators indicates a failure to meet these two goals. The fact that no prosecutions or lustrations have occurred, particularly in view of the fact that lustration was recommended for the sitting President Johnson-Sirleaf who not only continued in office after the report and recommendations were released but was also reelected in 2011, shows this recommendation was clearly not followed. The lustration recommendation was later declared unconstitutional by the Supreme Court of Liberia because the provision was made without providing any process for people who were lustrated to contest the lustration. Another recommendation, that for prosecution of various rebels involved in the war, including Prince Johnson who is currently a Senator in Liberia, has not been found unconstitutional but given the extremely poor condition of the Liberian justice system it is unlikely war crimes prosecutions will occur in the next few years, if at all (Raddatz, 2013, 187). If accountability for violent actions and violations of human rights is necessary for TRCs to lead to the growth of democracy, as argued by Brahm, it appears Liberia may not have made progress with the TRC that is sufficient to increase the level of democracy.

It is still early to see changes in democracy in Liberia that may be the result of the TRC since it ended so recently, but the peaceful election of 2011, which like the 2005 election was viewed by international observers as fair and free and for the most part free of violence, is a sign democracy is moving toward consolidation in Liberia. The continued presence of so many UN troops in Liberia, however, may indicate that the movement is contingent on a large international presence in Liberia.

At the commencement of the Liberian TRC there was a clear understanding that the relationship between the minority of Liberians in the Americo-Liberian group and the majority of Liberians who are considered indigenous Liberians needed to be addressed. According to the first volume of the report, the problem resulted not from a natural conflict between the groups but from the favoritism of the Americo-Liberian group by the American Colonization Society (ACS) and the cultural insensitivity by the United States government and members of the ACS to the traditions and customs of native Liberians which resulted in social and political inequalities that caused strife from 1847 and 2003 (Volume 1, Final Report, 49-50). It also led to the use of government institutions to maintain the superiority of one group over the other and to the disenfranchisement of native Liberians by allowing voting only by their tribal leaders rather than all adult Liberians (Volume 1, Final Report, 52). This was corrected in 1946 but in spite of the provision for universal suffrage Liberia continued to be governed by members of the True Whig Party, comprised only of Americo-Liberians until the coup d'état by Samuel Doe in 1980.

The final report also noted efforts to achieve Brahm's goal two, that of allowing divergent groups to be involved. According to the final report:

There were grave concerns that the TRC, like other national institutions before it, would be Monrovia-biased, and as such, many Liberians at the TRC's inception, did not take active roles in the process because they did not believe in the process, did not trust national organizations, or they simply did not understand the goals of the TRC (Final Report of the Liberian TRC, Volume 2, 203).

Hearings were held in all fifteen counties of Liberia, something that was difficult due to the lack of adequate roads and infrastructure. The TRC worked with existing NGOs to make this possible and

succeeded in holding hearings that were not confined to the capital. They also were unique in its efforts to achieve this goal, going to the extent of involving the Liberians of the diaspora, those living outside of Liberia at the time of the TRC, holding meetings with Liberians in the United States, the United Kingdom, Ghana and Sierra Leone (Final Report of the Liberian TRC, Volume 2, 210).

Despite these efforts by the TRC, or possibly because of the nature of their recommendations for war crimes trials and lustration, democracy in Liberia has not been substantially improved by the TRC, at least in the short term. Its long term effect may be different but can't be measured at this time. Continuing challenges for democracy in Liberia are discussed below in the context of two indices of democracy, Polity IV and Freedom House along with some observations from the International Center for Transitional Justice. Among other things, executive constraint remains problematic with the country being in an intermediate position between substantial limitations on executive authority and executive parity or subordination. Since the 2005 election there have been improvements in the power of the legislature to place restraints on the executive-the president's party, the Unity Party (UP) only received four out of thirty Senate seats and eight out of sixty four seats in the House in the 2005 election. In the 2011 election the UP only received ten out of thirty Senate seats and twenty four out of seventy three seats in the House (Elections in Liberia). This limited legislative control by the president's party would be more constraining if Liberia had only two main parties or had coalitions, but to date the various parties have struggled to form coalitions, leaving no party or coalition in the majority in either house of the legislature.

The unitary nature of the government also leads to the lack of executive restraint. Liberia has fifteen counties (similar to US states) governed by superintendents appointed by the president, subject to the advice and consent of the Senate. The president is also able to appoint the justices of the Supreme Court and the lower courts as well as marshals, sheriffs and magistrates. Although Liberia has elections, most local positions such as superintendent are appointed by the federal government rather

than by the people at the local level (Freedom House-Liberia-Country Reports, 2013). This results in an inequality in power between the federal government and the lower components of the state and an ability by the executive to use the appointment of superintendents, sheriffs, marshals and other government positions to strengthen her control over the government.

It also includes the ability to use government jobs to reward supporters with government jobs. In interviews with members of the president's Unity Party and the opposition Citizens for Democratic Change Party in Liberia in October of 2011 all rank and file party members who were interviewed mentioned their belief that their support for the party would result in a job with the government.²⁷ One interviewee, Johnny Koroma, an amputee who is a member of the Liberian Amputee Soccer team, mentioned his desire to attend college to obtain a degree in computer science and explained that in order to get a scholarship for college (the only way he could attend the university), prospective students had to become party supporters. He noted that most people accepted to the university were from the president's party and that all receiving scholarships were. Whether these beliefs were true or not, the perception of favoritism is certainly present in Liberian politics. The UN progress report to the Secretary General in 2012 showed there was some credence to this belief, noting that only eleven out of four hundred forty seven cabinet and other government positions after the 2011 election were given to non-Unity Party people (Twenty-fourth progress report of the Secretary-General on the United Nations Mission in Liberia).

The final report of the TRC identified patronage, privilege and politicization of the military as one of the root causes of the conflict in Liberia (TRC Final Report-Volume 2, 2009, 16). The TRC addressed this concern by recommending changes in the political culture and the reform of all Liberian institutions to insure the fair and equal treatment of all citizens that is necessary for democracy (TRC Final Report-Volume 2, 384). Despite these recommendations it is clear that Liberia continues to struggle with the

²⁷ Personal interviews with members of the Unity Party and Citizens for Democratic Change Party in Monrovia, Liberia, October 8, 2011.

strong central nature of their government which allows corruption, patronage and privilege to still exist. This struggle prevents Liberia from making the transition to a fully consolidated democracy and reduces trust in government on the part of citizens.

The effect of the TRC on democracy in Liberia is uncertain for several reasons. First, it can only have an effect if there is knowledge of its existence and at least a general understanding of its findings as noted by Gibson (2004, 21-22). In a survey of Liberian citizens conducted by the Human Rights Center at the University of California, Berkley School of Law 45% of Liberians surveyed indicated they had no knowledge of the TRC and 46% said they had little knowledge of it. Only 8% said they had an average or higher knowledge of it (Human Rights Center, 2001, 70). This is very disturbing given the fact the TRC concluded two years prior to the survey and a public report was issued and widely disseminated. 73% of those surveyed indicated, however, that they had heard of the TRC, leading to the conclusion that most Liberians had heard about it but 92% of them knew little or nothing about it other than its existence. In comparison to the 92% who knew about the SC-SL trial of Charles Taylor, however, this number seems low. Additionally, although 76% said that truth in general was important to them, only 44% said that truth about the war was now known to them, seven years after the end of the war. Despite the fact that 92% said they had no or little knowledge of the TRC, 42% said they had heard about the TRC recommendations. Only 39% believed that the TRC helped peace and 38% agreed it helped with unity. The county with the highest percentage of people who knew about the TRC was, not surprisingly, the capital of Liberia, Monrovia, where 90% of the people were aware of it and 74% of the people knew at least a little or an average amount or higher about it, as opposed to 54% in the country generally. They also had a greater belief in the connection between the TRC and peace and unity than the rest of the country (Human Rights Center, 2011, 69-71).

This lack of knowledge of and faith in the TRC process is disturbing, particularly the difference between Monrovia and the rest of the country. Hearings for the TRC were held throughout the country,

although the majority were centered in Monrovia, in an effort to involve the entire citizenry which was apparently unsuccessful. Video of many of the TRC hearings is available online and a written report was submitted to the National Assembly and publicly released (Liberian TRC Final Report, Volume One, 16-17). Despite these efforts, awareness and understanding of the TRC is still sorely lacking in Liberia. This could be due to two factors, the high level of illiteracy in Liberia and the lack of access to methods of communication such as the internet, newspapers and television. This lack of literacy affects the ability to read the TRC report, but more critically to read the more common method of accessing the report, the newspaper accounts of the TRC. For the rest of the country, radio and word of mouth are the main methods of communication, reducing access to information about the TRC (Human Rights Center, 2011, 24).

The International Center for Transitional Justice (ICTJ) issued a report entitled “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia” in May of 2010, approximately a year after the final TRC report was released. That report cites some good aspects of the TRC report but notes also some major deficiencies. First, the ICTF report notes there is no citation of facts in the TRC final report which supported its recommendations, other than a general statement that over five hundred primary sources were used. Without a connection between the facts and the recommendations there is no way to test the validity of their conclusions; they have to be taken at face value, which is something that so far has been rejected by Liberians. It also does not show that due process, other than public hearings, was used in arriving at the conclusions and recommendations, making them not up to legal standards (ICTJ Report-Liberia, 2010, 14). For example, people recommended for lustration or prosecution were not given notice before the hearings that the recommendation might be made and few of them testified at or participated in the hearings.

Second, there is a weak link between the historical narrative within the report and the conclusions and findings of the TRC. Many of the findings and recommendations contradict each other

and sections citing actions by outside actors don't match up with recommendations regarding those actors (ICTJ Report-Liberia, 2010, 15). If the message of the TRC and its findings are not consistent the TRC is likely to fail in factors four and five of Brahms' five factors since cannot remove "enclaves of non-democratic power by naming names of perpetrators" and cannot create a sense of shared destiny or deprive perpetrators of support and remove their influences if a consistent message is not found and published.

Third, and most critically, the recommendations are not related to what can be carried out in Liberia given current resources and infrastructure. The ICTJ notes that:

The viability of a recommendation not only pertains to evidentiary support and linkages to findings, but also whether it can be carried out given available resources and capacities. In best practices, every truth commission recommendation should be directed to a specific implementing agent and contain sufficient specificity, direction and guidance. Few, if any, of the recommendations meet all of these basic criteria. Many are quite vague and not directed towards actor more specific than the "Government of Liberia" and the "international community" (ICTJ Report-Liberia, 2010, 15).

By making recommendations that could not be carried out, the report failed the people of Liberia, creating expectations for lustration, prosecution, reparations and modifications to the "business as usual" of government in Liberia. When these expectations are not met, particularly with regard to the recommendation for the lustration of the sitting president of the country, it is difficult to further consolidate the democracy in Liberia.

One recommendation from the TRC report has been carried out, although not without difficulty. An Independent Human Rights Commission (IHRC) was finally created and commissioners appointed in 2010 and the commission has begun listening to complaints regarding human rights violations. The IHRC planned to create a "Palava Hut" program, a traditional dispute resolution method. The commissioners understood their obligation to carry out the TRC recommendations, including reparations but acknowledged the difficulty in carrying out that recommendation due to lack of finances in Liberia and

the impossibility of carrying out criminal prosecutions in the current political environment.²⁸ According to the UN, Palava Hut committees have been set up in all fifteen counties but no hearings had been held as of 2012 (UN Special Report, 2012, 1). The effect of the Palava Hut program when it begins is impossible to predict but if it is conducted fairly and comprehensively it may have an impact because the program will result in the exposing of the action of perpetrators and will rebuild the sense of shared destiny that is critical to make groups feel involved in the making of Liberia as a cohesive nation (2324).

Lastly, to date, no reparations have been paid to victims of abuses although former soldiers and rebels have received some funding through the UN as a result of a UN initiative, not because of the TRC recommendations. Demobilizing soldiers were given the option of cash payments of \$300 USD or a retraining program, with most electing the cash payments due to uncertainty regarding the retraining programs. This created a great deal of animosity with victims of the violence who saw the rebels who tortured, murdered and stole receiving payments, while victims received nothing (ICTJ-Transitional Justice and the DDR).

Democracy had already begun to improve before the TRC hearings, with the 2005 presidential and legislative election being judged by the international community as a free and fair election. When the CDC candidate did not win the 2005 run-off election against Ellen Johnson-Sirleaf there was a real possibility of the return to anarchy and chaos in Liberia. This did not happen and a second successful election was held in 2011, albeit another controversial one due to the boycott of that year's runoff election by the CDC. Between 2006 and 2010 Liberia has maintained a fairly good score of positive six, making it a democracy according to Polity IV scale.

However, there are several things that continue to constrain Liberia's democracy. First, there is a continued sectarian divide between the Americo-Liberians and the indigenous populations of Liberia. Its inhibiting effect on political participation is seen in the Polity IV scores for Liberia. Liberia has both

²⁸ October 11, 2011 Author's meeting with IHRC Commissioners, Monrovia, Liberia.

the past exclusion of indigenous citizens from political participation, with only two presidents in the history of the country being from an ethnic group other than the tiny minority group of Americo-Liberians and current exclusions of groups from cabinet and other governmental positions based on the political favoritism accorded to members of the president's Unity Party over other parties. The failure of the TRC in particular or other Liberian institutions to reduce these sectarian tensions is critical to Liberia since they have historically been the basis of much of the civil unrest and both civil wars, and will continue to do so unless addressed. The current president, Johnson-Sirleaf, argues she is not an Americo-Liberian because her father was from an indigenous family. But her history is one of support for Americo-Liberian policies and her background of Harvard education speaks of an elite, not indigenous, connection (Biography Brief of Ellen Johnson-Sirleaf). Nothing has occurred since the TRC to change the balance of power between the two groups.

Second, the failure on the part of the government to address adequately the recommendations of the TRC has reduced dramatically its ability to bring marginalized groups into participation in Liberia. Although the most controversial provision, calling for the lustration of a number of Liberians, including the sitting president, was declared unconstitutional by the Liberian Supreme Court, the failure to follow other recommendations such as war crimes trials, reparations and the Palava Hut program have reduced the citizens' faith in the government and its ability to bring about change.

Citizen's lack of knowledge of the activities, findings and recommendations of the TRCs has an impact on the ability of the TRC to impact democratic consolidation and support for the rule of law. It obviously cannot support those endeavors if people aren't aware of it. As Gibson points out, acceptance and confidence in the TRC can only occur if there is knowledge of the proceedings (2004, 21-22). This has affected public confidence in the TRC and acceptance of its role in resolving the conflict in Liberia. 45% of survey respondents were pessimistic that the recommendations of the TRC would be carried out,

while 31% believed they would only be partially carried out (Human Rights Center, 2011, 71). This shows a general lack of confidence in the TRC and affects its power to effect change.

The Relationship Between the TRC and Rule of Law In Liberia

Many of the same things that constrain democracy in Liberia function as restraints on the rule of law as well. Dimitrijević (2006) argues that the use of a TRC is critical for post conflict societies to achieving the rule of law because it allows a state to establish a new moral foundation, to move away from the old institutions and methods of addressing conflicts in a state. He compares this to states, such as Germany during World War II that had a legacy of immorality and evil that need to be replaced by a new moral foundation rather than just a new set of leaders. The role of a TRC is to expose immorality and evil in order for a new environment to flourish and the connection between truth and justice justifies the use of a TRC (371).

The TRC in Liberia attempted to expose the immorality and evil of perpetrators during the civil war, but because the TRC has been ignored and devalued in Liberia through the failure to adopt and implement its recommendations, the ability of the TRC to address these concerns was greatly reduced. Instead, many of the perpetrators of the worst abuses in Liberia remain in power or have come to power, reducing the creation of a new moral foundation. Although Charles Taylor has been ousted from office and convicted by the International Criminal Court (ICC), many of his followers remain in power in Liberia, including his wife Senator Jewel Taylor, described in 2012 by Newsweek Magazine as the second most powerful woman in Liberia (“Life After Charles Taylor”, 2012). Several former warlords including Prince Johnson, Sando Johnson, and J. Jonathan Banney serve as senators in the Liberian Senate despite being listed as “most notorious perpetrators” by the Liberian TRC report and being recommended for prosecution (TRC, Consolidated Final Report, Vol. 2, 350).

As was seen in Chapter Two, there are various definitions of the rule of law that could be applied. According to Mani rule of law requires a functioning, independent and efficient police and judicial system, open and public procedures and accountability to create and maintain trust. Also as noted in Chapter Four there are a variety of indexes used to measure rule of law, including the CIRI index used in this dissertation. For this case study the individual indexes of CIRI, along with the aggregate scores will be used because they provide more information about the various aspects of rule of law, including physical integrity and independence of the judiciary. Transparency International's Corruption Perception index (CPI) will also be analyzed since corruption is a part of rule of law and has been historically problematic in Liberia. Additionally survey data will be utilized regarding Liberian's perceptions of the rule of law, including corruption and the judicial system in general.

The TRC has been identified as a key institution to assist in the development of the rule of law in Liberia. According to the Chairperson of the TRC, Jerome Verdier, Sr.:

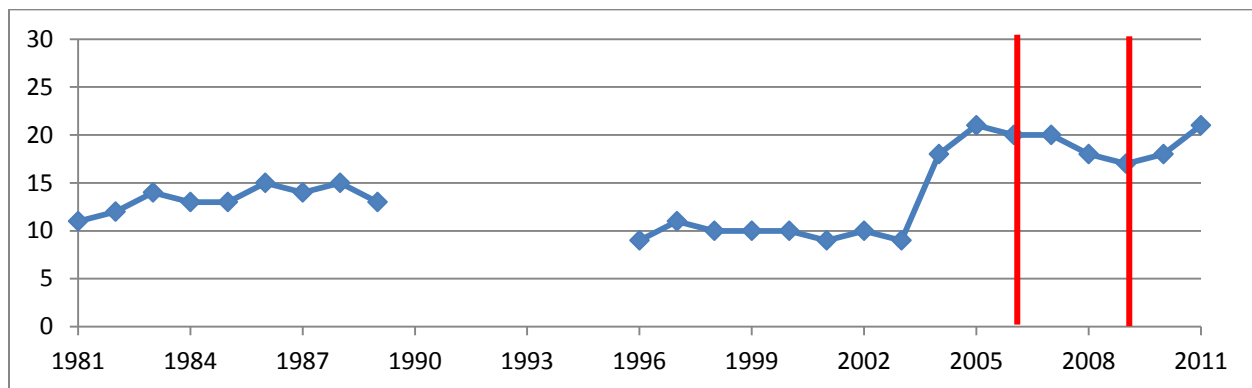
The Commissioners of the TRC feel very strongly that the future of Liberia rests with Liberians. While the international community has and will continue to play a role in assisting Liberia develop a sustainable democracy, only Liberians can establish a durable human rights-based culture where peace, development and the rule of law are permanent features of its political heritage.

The Commission is convinced, as all Liberians are that the TRC framework provides the best opportunity yet, to review the past, learn from the past and lay the foundations for sustainable peace, justice and national reconciliation (TRC, Preliminary Findings and Determination, Vol. 1, 3).

While the need to establish the rule of law may have been clear to the commissioners of the TRC and the international community, the methods to establish it are less clear. According to the CIRI index, the rule of law has improved since the end of the civil war in 2003 although most increases were from 2003 to 2004, before the 2005 election, and well before the TRC. In 2004 Liberia had a score of 21 out of 30 in rule of law, which was a dramatic improvement over 2003. The biggest change was in physical integrity rights, which includes torture, extrajudicial killings, political imprisonment and disappearances. This isn't surprising since the end of the civil war brought a lessening of many of these

problems, particularly given the presence of a huge international force. There were also improvements in the empowerment index, which includes respect for civil liberties such as freedom of speech, freedom of association, freedom of movement and freedom of religion. These improvements were more closely related to the actions of the government. Civil liberties have remained relatively high or have increased since 2004 but the physical integrity index has shown a decrease since then from a high of seven out of a possible eight in 2004 to a five out of eight in 2010. The independence of the judiciary, a critical feature of rule of law, has not improved according to CIRI since the civil war, which is reflection on the strongly centralized nature of the Liberian government. The judiciary remains weak and ineffective as a check on the legislative and executive branches, partially due to infrastructure restraints. See Figure 5.2 below.

Figure 5.2: Rule of Law in Liberia-1981-2010²⁹
Vertical line represents the TRC from 2006 to 2009



Source: CIRI

As can be seen in Figure 5.2, a positive change in rule of law occurred before the TRC and is therefore not attributable to the actions of the TRC. In fact, the rule of law scores declined slightly during the period of the TRC, from a high in 2005 of 21 points, to a low in 2009 of 17 points.

USAID in its “Rule of Law Programs in Liberia” report in April of 2009 identified a number of barriers to progress and impact in rule of law programs, including:

²⁹ No data available for 1990-1995

1. The lack of political will for reform by high- level GOL officials in all three branches (limited political buy-in, conditionality or accountability for most rule of law programming);
2. Legal gaps and deficiencies in the law (outdated criminal, civil and administrative laws, sanctions and weak enforcement mechanisms);
3. The lack of administrative, management and enforcement capacity of key justice institutions to implement legal reforms;
4. The inability of justice sector officials and the public to access the law itself (both the laws and court decisions are virtually inaccessible for most Liberians and many rural Liberians cannot read English);
5. The lack of legal rights awareness and societal consensus on reform priorities and issues (including how to reform “competing” justice systems formal, traditional and tribal justice systems);
6. Limited access to transparent, fair and efficient justice in either the capital or rural counties (lack of law school graduates, private lawyers, county attorneys, public defenders, paralegals and qualified judges);
7. The high cost of accessing the justice system for most impoverished Liberians (court fees and time and expenses traveling to distant courthouses);
8. The lack of a focused rule of law strategy within post-conflict Liberian context;
9. The lack of donor coordination and collaboration;
10. Unchecked endemic corruption throughout the justice sector and
11. The lack of accountability within the justice sector (USAID Report, April, 2009).

Many of these concerns relate to the lack of resources and infrastructure for a sound judicial system. Many Liberian counties lack even a jail to house offenders pending trial, adequately trained judges and attorneys and police officers. Many courthouses were damaged or destroyed during the two civil wars and Liberia only has one law school which graduates less than forty lawyers per year. For a country of over three million people, this is hopelessly inadequate to meet the demand for attorneys, judges and magistrates.³⁰ The TRC did not create and was not mandated to fix this problem but it does have an impact on improvements in the rule of law, showing that there is a limitation on what changes a TRC can make in rule of law and providing. The Berkeley University Human Rights Center surveyed Liberians regarding their perceptions of the justice system. The inabilities pointed out above by USAID to provide capacity for the judicial system, to create an awareness of the formal justice system, to

³⁰ Interview with Alben Greaves, law student, Monrovia, Liberia, October 13, 2011.

provide access to a transparent and effective justice system, to make the justice system financially accessible, and the unchecked corruption in the justice system all relate to perceptions of the justice system (USAID Report, April, 2009). 75% of Liberians agree that going to court is too expensive for an average person. Liberians turn to informal justice systems such as Palava Huts and the intercession of tribal chiefs for their legal problems rather than utilizing the formal justice system. Vigilante justice is also common because of the problems with the system. Most Liberians also believe that judges do not treat people equally with 28% believing that judges treat everyone equally and only 23% believing that judgments are the same for everyone. This probably results from the predominance of Americo-Liberians in the legal and judicial fields. Most also believe they can't trust the justice system or judges and 44% argue they have to bribe a judge to get a positive ruling (Human Rights Center, 2011, 64). See Table 5.1 below.

Table 5.1: Liberian perceptions of justice system, 2011.

<u>Perception (% agree)</u>	<u>Total</u>
Liberian judges treat everyone equally	28
Judgments are the same for everyone	23
Going to court is too expensive	75
You trust the Liberian court system	36
Your trust the Liberian judges	31
Going to court means you have to bribe the judges	44
Liberian lawyers are able to do their work freely	30

Source: Berkeley Human Rights Center

The TRC had some effect on the feelings of Liberians regarding the judicial system but much of the lack of trust relates to the class struggle between the Americo-Liberians and the indigenous population. It has little if any impact on the cost of going to court, but could have an impact on trust in the system, judges and lawyers. However, developing that trust will take time and the two years between the TRC and this survey is not sufficient to develop that trust. The lack of prosecution of

offenders and the finding of unconstitutionality of the lustration provision lessened the ability of the TRC to develop that trust by making promises of justice to the Liberian people that were not delivered.

USAID's barrier one, the lack of political will for reform and eight, the lack of a focused rule of law strategy are more relevant to the TRC process (USAID Report, April, 2009). The TRC report notes that the feeling of unjust enrichment by elites, particularly the small minority of Americo-Liberians led to a belief that only force could be used to bring about democratic change. It also notes that combatants and indigenous groups used violence to seek revenge against the groups in power in an attempt to change the balance of power, leading to more violence and conflict. Lastly, it notes that judicial institutions in Liberia had historically failed to control abuses by the other branches of government, including the security forces and that rampant corruption eliminated the average Liberian's faith in judicial institutions (TRC, Consolidated Final Report, Vol. 2, 16). One of the key findings that relates to the TRC and the rule of law was Additional Finding 16 from the Finding and Determinations:

[The] lack of human rights culture and education, deprecation and over a century of state suppression and insensitivity, and wealth acclamation by a privileged few created a debased conscience for massive rights violations during the conflict thus engendering a culture of violence as a means to an end; with an entrenched culture of impunity.

This culture of impunity and feeling of entitlement is precisely the type of issue the TRC was designed to address. The findings of the TRC that one hundred sixteen people were "Most Notorious Perpetrators" who should be tried as war criminals and that thirty eight others should be referred to the Palava Hut program is clearly an attempt, whether one that follows due process or not, to address impunity and change the culture of impunity. The recommendation for lustration of forty nine people, including the sitting president of Liberia is also an attempt to fight impunity (TRC, Consolidated Final Report, Vol. 2, 350-353, 363).

Part of the problem, however, is that the TRC relied on the possibility of other actions such as lustration and trials to end impunity and change the political culture. Since lustration has been declared unconstitutional and war crimes trials have not started and people named for prosecution, such as

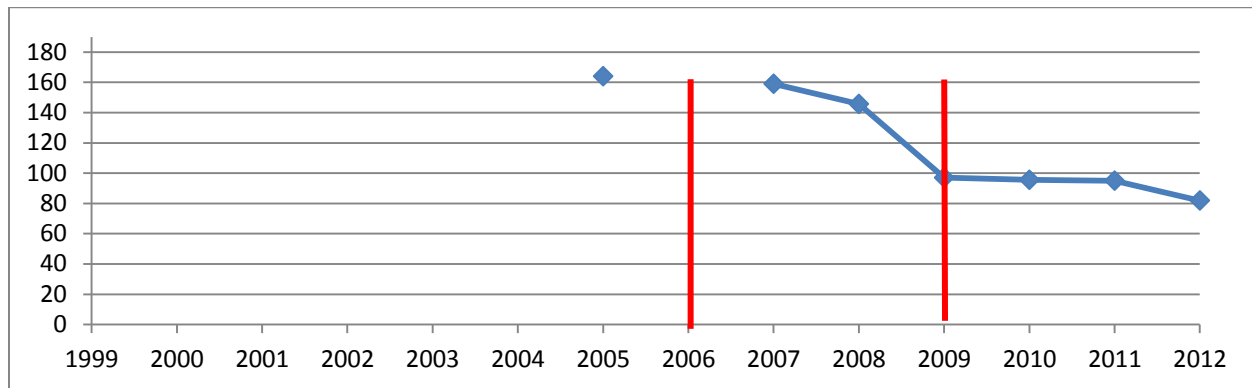
Prince Johnson, are currently acting as senators in the Liberian Senate the question becomes, if the TRC has had any relationship to improvements in the rule of law and, more importantly, have there been improvements in the rule of law in Liberia? There appear to be two main improvements: respect for physical integrity as measured by the CIRI and reduced corruption as measured by Transparency International. Both of these are key elements of the rule of law. This is encouraging and may be a result of the exposure of the abuses and names of perpetrators by the TRC report even if there has not been direct action as a result.

The CIRI index shows that physical integrity has been improved in Liberia since 2004 but no change has occurred since the conclusion of the TRC in 2009. It may be too early to measure any change in this scale since only data from 2010 is available through the CIRI. It is notable that despite a very contentious election in 2011 and the boycott of the runoff election by the number two party, the CDC, the amount of violence that resulted from the election was minor. This is a reflection of the presence of the international community, but also of a growing consensus for non-violent dispute resolutions and the use of the rule of law rather than repression to deal with political dissension (NEC-Liberia).

Another barrier to the rule of law is point ten, endemic, pervasive corruption throughout Liberia (USAID Report, April, 2009). CIRI does not specifically measure corruption and there are no studies of corruption for Liberia that predate the end of the civil war. However, Transparency International's Corruption Perception Index measures corruption before and after the TRC, with data from 2005 to 2011. Figure 5.3 below shows the improved scores for corruption in Liberia, with the score reflecting the relative placement of Liberia against the other nations in the world. In 2005, right before the election, Liberia was 164th in the world in corruption. In 2009, after the completion of the TRC, Liberia was ranked 97th in the world and they continued to improve to 95th by 2011. After the 2011 election they improved to 81st in the world.³¹ See Figure 5.3 below.

³¹ Note-a downward trend in corruption is positive, not negative since it shows an improved score.

Figure 5.3: CPI Index for Liberia-1999 to 2012³²
Vertical lines represent the TRC from 2006 to 2009



Source: Transparency International

Transparency International's ranking are based on surveys taken of corporations and financial institutions, so while 44% of Liberians may believe you have to bribe a judge to get a positive result, the financial community has a better opinion of corruption in Liberia (Transparency International-Liberia).

Although the CIRI index shows improvement in the rule of law in Liberia since the peace agreement was signed in 2003 it is clear from the surveys of Liberian citizens that there continue to be perceived problems with the corruption in the judicial system. The CIRI index shows that physical integrity rights have improved since the peace agreement, from one out of eight in 2003 to a high of seven in 2004 and 2005 during the transitional government and the first election, but that score has deteriorated to a five since then despite the TRC proceedings.

There has been an improvement in the rule of law since the end of the second civil war in 2003, but there is no clear improvement in it since the TRC ended in 2009. The one indicator that shows improvement is in corruption and that has improved dramatically but the others do not show improvement since 2009. It is important because of the limited time between the end of the TRC in 2009 and the last information from CIRI and from the Berkeley Human Rights Center in 2011 to look again at Liberia in a few years to see if the gains in physical integrity rights, empowerment, and

³² No data is available from 1998 to 2004 or for 2006.

corruption have continued and to see if the perceptions by Liberians of the reliability of their justice system have improved. That would indicate that the TRC may have a continuing and positive impact on rule of law.

The Effect of the *de facto* Amnesty on Liberia

Liberia did not offer an official amnesty in the TRC like the conditional amnesty that was offered in South Africa, but the failure to adopt the recommendations of the TRC to prosecute and lustrate various people involved in the civil war has resulted in a *de facto* amnesty. Although Liberia is not prevented from prosecuting offenders, the failure to do so in the ten years since the civil war shows it does not have the political will to overturn this *de facto* amnesty.

Authors such as Moore (1990-1991) argue that amnesties can cause impunity and interfere with the growth of the rule of law. The Accra Peace Accord in 2003 for Liberia provided for the possibility of amnesty but no formal general or conditional amnesty was ever granted to perpetrators by the government. However, the failure to follow through on the recommendation of the TRC for prosecution amounts to a *de facto* amnesty, adding to the feeling of impunity.

A survey conducted by Afrobarometer in 2008 asked Liberians for their opinion regarding amnesty for human rights violations. The survey gave participants two statements to consider and choose one to agree with. Statement 1 asked them to agree that “Those who are responsible for human rights violations committed during the past conflicts should be granted amnesty, which means that they would never be subject to criminal or other consequences for their action.” Statement 2 asked them to agree that “Those who are responsible for human rights violations should be held accountable and face consequences for what they have done.” See Table 5.2 below for the results of that survey.

Table 5.2: Afrobarometer 2008 Question-Amnesty for Human Rights Violations-Liberia

<u>Answer to Survey Question</u>	<u>Total</u>
Agree or strongly agree with statement 1	40
Agree or strongly agree with statement 2	59
Agree with neither	0
Don't know	1
Don't know	1

Source: Afrobarometer 2008

40% of the Liberians surveyed agreed with Statement 1, either strongly or somewhat, while 59% agreed with Statement 2. The sentiment for amnesty is fairly strong, but more than one half of the population did not support amnesty in 2008 (Afrobarometer-Liberia, 2008). Although Liberia did hold a TRC, which worked to combat impunity by bringing out the story of abuses, the lack of prosecutions is resulting in a *de facto* amnesty, something that a majority of Liberians do not want.

The Afrobarometer's survey data was taken in 2008, before the TRC. The Human Rights Center's surveys, conducted after the release of the TRC report showed that 54% of Liberians supported forgiveness, while the remainder supported some form of accountability. Although forgiveness isn't identical to amnesty, since it was the non-punitive option it is similar to amnesty. So, in 2008, 40% of Liberians supported amnesty, in 2010 54% favored a non-punitive option for perpetrators while 46% supported trials (27%), some form of punishment (13%), killing them (3%), and other (3%).³³

In 2012 Afrobarometer did not resurvey Liberians regarding their views on amnesty, but they did ask for opinions regarding lustration. The survey gave participants two statements to consider and choose one to agree with. Statement 1 asked them to agree that "In order for the country to move forward, those who committed crimes against humanity should not be required to confess their roles before they can stand for elected office." Statement 2 asked them to agree that "Since reconciliation is

³³ Support for non-punitive options varied by county, with the lowest support from Monrovia and counties where some of the fiercest fighting occurred, while support for non-punitive options was the highest in Bong County, the headquarters of Charles Taylor, Lofa County and Nimba County where rebel forces were organized and the birthplace of Senator Prince Johnson and Gbarpolu County which has the largest Muslim population in Liberia. These counties border the surrounding states of Guinea, Sierra Leone and Côte d'Ivoire

about speaking the truth, individuals who committed crimes against humanity should not be allowed to stand for elected office unless they publicly confess to their wrong doing during the conflicts in Liberia.”

See Table 5.3 below for the results of that survey.

Table 5.3: Afrobarometer 2012 Question-Lustration for Human Rights Violations-Liberia

<u>Answer to Survey Question</u>	<u>Total</u>
Agree or strongly agree with statement 1	24
Agree or strongly agree with statement 2	74
Agree with neither	1
Don't know	1

Source: Afrobarometer 2012

Like with amnesty most Liberians support accountability through lustration for the human rights abuses during the war although more support lustration (74%) than supported the general concept of accountability (59%). This may be because four more years have passed since the first set of surveys and Liberians have seen that prosecutions did not result from the TRC nor has any other type of accountability occurred, making lustration an attractive compromise measure. Lustration may also be something more easily understood by the survey takers than the more general term of accountability. Regardless, it is clear the majority of Liberians continue, nine years after the peace agreement, to want some kind of accountability for the abuses that occurred during the war and they supported the lustration recommendation of the TRC even though it suggested accountability for the sitting president of Liberia.

Liberians clearly want accountability, whether it is prosecutions, lustration or some other form of accountability. Although there is no clear stated amnesty in Liberia, the effect of the judicial declaration that the lustration provision was unconstitutional and the fact no trials have been conducted in the ten years since the war ended is to leave Liberians without this accountability. This has lessened

the impact of the TRC by undercutting its recommendations, reducing its credibility and reducing its impact on rule of law in Liberia.

Conclusion

Liberia has not been a consolidated democracy in its history. For most of its history Liberia was a single party autocracy, ruled by the tiny minority of Americo-Liberians. Since 1980 various groups have rebelled against the rule of this group, with the first non-Americo-Liberian taking office through a coup d'état and staying in power not through democratic means but through a variety of extrajudicial means. Liberia has, since the end of the second civil war, conducted two elections which are generally considered to be fair and free and has elected a president, Ellen Johnson-Sirleaf, who took office through the democratic process and continues to rule democratically after the second election. It is a multi-party state and the president's party, the Unity Party holds only a plurality in the legislature, not a majority (necliberia.org). Since the end of the second civil war Liberia has improved its rule of law and at least in terms of freedom from torture, disappearance and the political violence is a much safer, more legal place to live. The ability of the state to conduct two free and fair elections and control the protests and boycott of the runoff election by the losing party in the 2011 election without the resort to significant repression and violence signals the growth of both democracy and the rule of law. The modest reduction in corruption also points to positive changes in the state, particularly given the concern from citizens about corruption.

However, there are still major issues in Liberia. In a shocking nine out of fourteen counties, more than 40% of Liberians say no one provides them with security and many other Liberians identify community watch groups, neighbors, rubber plantation security guards, God, local defense and traditional leaders as sources of security instead of the government or police (Human Rights Center, 2011, 55).

The Liberian TRC was created to address concerns regarding impunity and the conflict between groups that led to two disastrous civil wars. It did provide a forum for a national discussion of the events of the two wars and its recommendations for lustration and prosecution offered the hope of accountability for the abuses that occurred. The failure of the TRC to follow through on recommendations for war crimes trials and lustration (and in fact the finding by the Liberian Supreme Court that lustration was unconstitutional) has worked against the development of trust and confidence in the Liberian judicial system and government in general. It will be difficult to move toward a fully consolidated democracy without making changes in the political culture that favors the Americo-Liberian class over the rest of Liberians. Less than 50% of Liberians believe in amnesty for human rights violations, but to date there has been a *de facto* amnesty due to the failure to prosecute and only the former president has been held accountable for the abuses from the war. And most importantly, the power relationship between the Americo-Liberians and the rest of the population in Liberia has not changed; although President Johnson-Sirleaf is of mixed heritage she was a long time member of the True Whig Party and is identified with the interests of Americo-Liberians, not the rest of the population (Sessay, Ukeje, Gbla and Ismail, 2009, 48). Since this power relationship was a major factor in the two civil wars, the inability to address it is concerning for Liberia's future.

In Chapter Four quantitative testing showed that states that conducted a TRC after a conflict were more likely to see improvements in democracy and the rule of law than states that did not. It was also found that states that states with intense conflicts saw decreases in democracy and rule of law scores as compared to states with less intense conflicts. Liberia experienced a very intense conflict, with over 8% of the total population dying during the wars and over 25% being displaced. Liberia has seen improvements since the end of the second civil war in democracy and rule of law and in fact has seen improvements greater than those predicted by the quantitative testing if the improvements had occurred as a result of the TRC. However, other than improvements in corruption, there have been no

real improvements in democracy and rule of law since 2009, and really minor improvements since the beginning of the TRC in 2006.

It may be too early to see the effect of the TRC and Liberia may experience greater chance in the future. It also may be that because the TRC in Liberia was so flawed, with recommendations for lustration and prosecution that were not based on any form of due process and have not been followed, and limited dissemination of information about the TRC and its recommendations, that the TRC has actually decreased the chances for improvement by supporting impunity rather than accountability. For a TRC, such as the one in Liberia, to affect real change in a state it may need to have sound recommendations based on due process and widely discussed, that are followed through by the state to make a real difference in democracy and the rule of law. However, Liberia has benefited from the TRC to the extent that the true story about the civil wars and the ethnic struggle that caused them has been discussed and a record made of it. It will take a concerted effort by Liberia, with the support of the international community, to enact the recommendations or hold additional hearings with due process rights if it decides to make and implement more recommendations for lustration or prosecution.

The next chapter will look at the state of Mozambique, a state which chose a different route in the post conflict period, choosing forgiveness and forgetfulness over a TRC. The experiences of Mozambique will be compared and contrasted to those of Liberia in terms of their ability to make the transition to a democracy and improve their rule of law. Mozambique's civil war ended eleven years before Liberia's so they have had a longer time to make a transition. All other things being equal, they should have made greater progress than Liberia. Unfortunately, Mozambique continues to struggle to achieve democracy and the rule of law and as we shall see, there are signs that democracy is deteriorating in the past three years.

CHAPTER SIX: MOZAMBIQUE-FORGIVE AND FORGET

Mozambique, like Liberia, suffered through a long period of civil war, lasting seventeen years, from 1975 to 1992. Unlike Liberia, Mozambique chose a “forgive and forget” policy for recovery from the civil war and made a conscious decision to not conduct a TRC, war crimes tribunals or any type of transitional justice other than a general amnesty. Mozambique’s civil war is often described as one of the most brutal civil wars in the history of Africa, with nine hundred thousand people killed, many of them dying of malnutrition due to the disruption in agriculture caused by both the war and the economic policies of the Mozambican government (DeRouen and Heo, 2007, 509). Because of the severity and length of its conflict, this is an important state to study to understand the impact of a “hands-off” policy of transitional justice on democracy and the rule of law.

Mozambique and Liberia are not perfectly parallel cases. In Mozambique the violence was related to political affiliation, rather than the ethnic or racial differences as seen in Liberia; this often resulted in families and communities being divided. However, as in Liberia, In addition to the large number of deaths from the civil war, approximately 1.7 million Mozambicans fled the country to live in refugee camps in neighboring Malawi and Zimbabwe, while another 3 million were internally displaced within Mozambique. The war devastated the economy which was also damaged by periodic droughts, leaving one half of the population of Mozambique either forced to become refugees, be internally displaced or unable to economically support themselves and their families (Reconstruction National Integrity System Survey, Mozambique 2007, 17).

The effect of this many deaths and devastation to such a large portion of its population has created problems for Mozambique in its efforts to recover from the civil war and move toward a strong democracy and improved rule of law. Because the civil war ended with a negotiated peace, rather than military victory for either side in the conflict, and because there has been no effort to prosecute anyone for the violence and human rights abuses that occurred during the conflict, both sides in the conflict

have remained active in Mozambican politics. Mozambique today is a two party state and with the two former combatant groups from the civil war, the Front for the Liberation of Mozambique (*FRELIMO*) and the Mozambique National Resistance (*RENAMO*) making up these two parties. This results in an uncomfortable situation where both sides to a devastating conflict have to work together for the betterment of the state.

This case study of Mozambique reviews the political history of Mozambique particularly the history that relates to the political and ideological divides that rose after Mozambique obtained its independence from Portugal, provided the fuel for the civil war and continues today. This case study looks at the effect of this division on the ability of Mozambique to both make the transition to democracy by and to establish the rule of law. The lack of any transitional justice methods being used other than an amnesty has perpetuated the political power of the two political parties to battle for dominance. Unlike Liberia, Mozambique has not used any form of transitional justice. In fact, the government has refused to prosecute alleged war criminals, even those from the minority *RENAMO* party. This chapter considers the impact of that failure and compares and contrasts the findings in Liberia to Mozambique with regard to their movement toward democracy and the rule of law.

Background-Mozambique

Mozambique is a southern African nation slightly less than twice the size of California. It has a population of over twenty-three million people, with more than ninety-nine percent of its population being African along with a small number of Europeans and Indians. Very little of Mozambique is agricultural land and even less is irrigated although it does have natural resources, including coal, titanium and natural gas. It is subject to severe droughts and cyclones and flooding and the civil war caused movement from the agricultural interior land into the urban and coastal areas, stressing the environment and causing increased pollution and desertification. Only seventeen percent of the

population has access to sanitation and the danger of exposure to infectious disease, including malaria, the plague and hepatitis, is ranked as “very high” by the CIA World Factbook. It has the seventh highest HIV/AIDs rate in the world at 11 % of the population, which has resulted in a life expectancy at birth of only fifty two years. Maternal and infant mortality rates are also high (CIA World Fact Book).

These problems cause challenges for a struggling democracy to provide services to the population. Drought and its impact on food supply have been regular pressing issues since the end of the civil war. In 2008 Mozambique experienced riots and demonstrations when food prices were raised dramatically (Conceição,P., S. Levine and Z. Brixiova, 2011). Riots in 2010 led to ten dead and more than three hundred injured and further riots occurred in 2012 over food costs. Berazneva and Lee conclude that the cause of the riots and civil unrest is the level of poverty in Mozambique and the low level of food production (Berazneva and Lee, 2011, 3, 21). The government response to the riots and demonstrations was to use physical force against the rioters and then to lower temporarily the cost of food, leading to the next set of riots when the prices rose again. Mozambique continues to struggle with providing methods for peaceful discussion of and settlement of disputes and of providing basic services to its people.

History of the conflict

Mozambique’s first inhabitants were a tribal group called the Koisani, who were hunter/gatherers. Additional hunter/gatherer tribes from the north and west of Africa came in the third century and eventually evolved into farmers and herders. An Arab influence occurred by the tenth century and continued through slave trading and commercial trade in gold, rhino horn and ivory in return for pottery, cloth and metal goods. Arabs intermarried with native groups and a small number of Arabs remain there today. The primary religion today is Christianity, although approximately eighteen percent of Mozambique is Muslim (CIA World Fact Book-Mozambique).

Mozambique was invaded by the Portuguese explorer Vasco de Gama in 1498. Over the next two hundred years the Portuguese moved from the coastal areas to the interior and set up trading posts and mines to extract gold and export it to Portugal. Land in the interior was divided into parcels and granted to European settlers. Portugal also set up an extensive slave trade from Mozambique which operated legally until 1842 (although it continued for decades clandestinely). While native Africans were not enslaved as part of Portugal's colonization efforts, they were worked as sharecroppers in a virtually feudal system, while other natives were exported to the Middle East and the Ottoman Empire until 1877. In 1884 Mozambique officially became a colony of Portugal and the country was exploited by trading companies who leased large tracts of land to French and British companies (Electoral Institute for Sustainable Democracy in Africa: The slave trade and early colonialism 1700-1926).

Periodic uprisings against Portugal occurred in Mozambique from 1917 to until independence in 1975. Trading companies retained a tremendous amount of power throughout that time period and in 1933 Portugal's prime minister in 1933, Antonio de Oliveira Salazar, encouraged immigration of Portuguese citizens into Mozambique to rid Portugal of landless peasants demanding land reform (The Intractability Project, Mozambique 1977-1992 Narrative, n.d.). Their privileged place socially and economically created the class conflicts between the immigrants and the indigenous population that gave rise to the war for independence in the 1960's and although many other colonies peacefully gained independence in the 1950's and 1960's, Mozambique continued to be a type of province of Portugal with Mozambican citizens not having political rights and education and the pathway to becoming a Portuguese citizen, being very limited. In 1962 the rebel group Mozambique Liberation Front (*FRELIMO*) was formed. *FRELIMO* and fought an eleven year war for independence from the Portuguese. When independence was finally gained after a vicious war of independence from Portugal no elections were arranged as part of the transfer of power and Mozambique declared itself a one-party state (Cabrita, 2000, 5).

The Civil War in Mozambique

At the time of independence Mozambique had no experience with democracy. It had been a colony of Portugal, itself initially a monarchy, and later a Marxist regime. As noted above, the transfer of power from the colonial authority to *FRELIMO* was accomplished without elections or any effort to assess popular sentiment such as through a referendum. *FRELIMO* was a socialist organization with support from the Soviet Union and East Germany and attempted to apply socialist solutions to Mozambique. These included land and economic reforms and an educational program to eliminate the class differences between the ruling elite and the Mozambican population (BTI 2012-Mozambique, 3). This movement toward socialism resulted in the conflicts in Mozambique being considered as ideological and class based, not based on ethnic issues (Newitt, 1995, 542-543). *FRELIMO* removed traditional indigenous leaders and leaders who cooperated with the Portuguese and exerted complete control over both the economy and the government (Newitt, 1995, 544).

Despite the efforts by *FRELIMO* to eliminate class conflicts and bring about reforms, Mozambique continued to be plagued by significant economic problems. Between 1975 and 1992 there were several coup attempts against the *FRELIMO* run government, many of them sparked by disgruntled members of the military who had been promised material benefits for supporting independence from Portugal but had instead received virtually nothing from the socialist government. White settlers fled Mozambique as their houses and businesses were confiscated. The government also attempted to collectivize agricultural land, forbidding private ownership and buying heavy, mechanized farm equipment without considering the need for mechanics and operators of the machinery (Cabrita, 2000, 106, 109, 111-112).

Armed resistance by various rebel groups, including the Mozambican National Resistance (*RENAMO*), occurred against *FRELIMO* even before independence. *RENAMO* was created to conduct a campaign against the Marxist Mozambican government and to challenge its authority and was

supported by both Rhodesia and South Africa. *RENAMO* claimed in their 1982 Congress to have goals of creating a multi-party state, a free economy, a state that provided for human rights for all citizens although other authors such as Vine argue that in reality it created these goals to obtain international support rather than out of any desire to protect or support civilians or traditional leaders (Robinson, 2006, 54-55). *RENAMO* was supported by the white neighboring governments of South Africa and South Rhodesia and Malawi acted a channel for guns and money to be sent to *RENAMO* forces (Newitt, 1995, 565). Before 1984 the conflict between *FRELIMO* and the various rebels groups was limited but the conflict intensified in 1984 and more than 900,000 people died between 1975 and the peace agreement in 1992 (Bertlesman's Transformation Index 2012-Mozambique, 3).

The civil war between *FRELIMO* and *RENAMO* was finally resolved by a UN brokered peace agreement between them in 1992. Both parties agreed to a multi-party election which finally occurred in 1994 (General Peace Agreement of Mozambique-1992). The peace settlement called for the disbanding of *FRELIMO*'s secret police and for disbanding of the private armies of all groups. Despite these provisions in the peace agreement *FRELIMO* and *RENAMO* have dominated Mozambique politically since the peace agreement. The previous centrally planned economy evolved to a market economy, with most of the former political leaders and their followers benefiting (Cabrita, 2000, 270-271). The African Peer Review Mechanism (APRM) report of 2009 notes that this control over the market and the administration of the state by *FRELIMO* continues to be the impediment to the consolidation of democracy in Mozambique (APRM-Mozambique-2009).

At the height of the United Nations peacekeeping mission from 1992 to 1994 with over 6,000 troops along with 2,500 police and civilian assistants and 900 observers. However, unlike Liberia which has had United Nations peacekeepers continuously since the peace agreement, UN peacekeepers were only in Mozambique from the peace agreement in 1992 to November of 1994, and were removed shortly after the first election (<http://www.un.org/en/peacekeeping/missions/past/onumozF.html>). The

peacekeeping mission in Mozambique was generally thought to be one of the more successful UN peacekeeping missions (BTI-Mozambique, 2012).

However, even though elections in 1994, 1999, 2004 and 2009 have been generally declared free and fair, *FRELIMO* has won every election. BTI argues that *FRELIMO* has worked to exclude participation by rival parties, particularly the newest party the Democratic Movement of Mozambique (MDM) which is a splinter party from *RENAMO*. In the 2009 election *MDM* was unable to run in nine out of thirteen parliamentary districts, although BTI states that it is currently impossible to verify the exclusion was a concerted effort by *FRELIMO* since the records are not yet publicly available (BTI 2012-Mozambique, 4, 7). *FRELIMO* has also dominated the legislature, winning 75% of the parliamentary seats in 2009 for example. The single-party dominance by *FRELIMO* has resulted in continued discord between the two major parties and the population and demands by *RENAMO* and its supporters for the right to secede from Mozambique and form its own independent state. It has support in northern and central Mozambique in an area spanning five contiguous provinces, but two provinces to the north of this area, Sofala and Cabo Delgado are under the control of *FRELIMO*, meaning any secession by *RENAMO* from Mozambique would isolate these two *FRELIMO* provinces from the rest of Mozambique (Electoral Institute for Sustainable Democracy in Africa: Mozambique 2009 Assembly of the Republic national results, January, 2010).

History of Mozambican Democracy

Prior to independence Mozambique was governed by the Portuguese without political participation by the Mozambicans, leaving them with no experience in self-government. The new government of Mozambique was a single-party system. A resistance group, *RENAMO*, supported by South Africa and Rhodesia was formed to contest *FRELIMO* power. Mozambique's government became a totalitarian state with all powers vested in the ruling *FRELIMO* party (Cabrita, 2000, 81, 86).

Polity IV data is available for Mozambique from 1975 to 2012. From 1975 to 1986 Mozambique scored a two out of seven for executive restraint. This indicates a state with almost no restraint on the power of the executive, but with some slight but real limitations. This indicates a state run by the executive branch with little constraint by the people, the legislature or the judiciary rep (Polity IV-Mozambique).

The legal system was also under the control of the ruling party, which, in an effort to maintain control, eliminated private law chambers and created a governmental legal service in its place during the civil war. Few people had access to attorneys and the new service was controlled by the government rather than acting as a hedge against governmental oppression. A political police force was also created, empowered to search and arrest people without a warrant and to either detain people, send them to court or to a re-education camp. The police were also able to confiscate property owned by political opponents (Cabrita, 2000, 86, 90).

With its first multiparty election in 1994 Mozambique began its transition to democracy. In 1994, after the General Peace Agreement (GPA), Mozambique had a score of four out of seven for executive constraint. This indicates a state that is between having some slight constraints and substantial limitations on the executive and is an improvement on this issue before the peace, but still is not a fully constrained executive. This shows the tentative movement toward democracy with the establishment of the first multi-party election in 1994 where representatives were elected for the first time from parties other than *FRELIMO*. This score has stayed the same since 1994 (Polity IV-Mozambique). This shows there was no improvement in the concentration of power in the hands of the executive, which is also a reflection of the fact that *FRELIMO* has stayed in continuously in power since 1994.

Despite the fact that Mozambique has had regular elections since the GPA, all elections since then have been dominated by *FRELIMO*. In every case, *RENAMO* has registered complaints of electoral

irregularities and the failure by Mozambique to correct the problems in their elections has reduced trust in government by the citizens. For example, *FRELIMO* won the 1994 election through a system of distribution of seats that favored them. *FRELIMO* won the 2009 presidential election with 75% of the vote (Cabrita, 2000, 272).

One of the problems with elections in Mozambique is the allegations that because of the ruling party's control over the government they were able to control the electoral process and government policies sufficiently to eliminate any serious threat from other parties. The problems were resolved sufficiently to avoid another civil war when revisions were made in the electoral laws in 2004 and a third party, the Democratic Movement of Mozambique (MDM) was organized, giving citizens a third choice. This improvement is perhaps reflected in the increase in voter turnout in 2009, after steady declines in turnout since the 1994 transitional election.

To date Mozambique struggles with its transition to democracy. The 2009 election, despite improved turnout had numerous irregularities in the 2009, such as *FRELIMO*'s use of power to disqualify candidates from other parties. *FRELIMO* made use of state resources for campaigning and controlled in large part the media, making difficulty for rival parties to get their message across. In the 2009 election there was also violence directed against rival parties in an attempt to prevent them from holding rallies (FreedomHouse.org/2010/Mozambique). Nonetheless, in 2009 the MDM contested successfully for seats in the parliament, despite being excluded from nine out thirteen provincial seat elections by the ruling party (BTI-Mozambique, 12).

One of the ongoing difficulties for Mozambique in becoming a fully consolidated democracy involves decentralization of state power. Mozambique historically had strong traditional leaders and a decentralized government. When *FRELIMO* took over after independence they attempted to distance themselves from these traditional leaders and control the government centrally. At the end of the civil war *FRELIMO* attempted to reconnect with the traditional leaders, with the president announcing in

1995 that he wanted the power of traditional leaders to be reinstated (West and Kloeck-Jenson, 1999, 462, 457). This desire to co-opt traditional leaders into the government is also seen in Liberia. However, to date in Mozambique no authority has been granted to them by the central government, resulting in a continued conflict between the traditional authorities and central government. Because of the exclusion of traditional leaders in municipal governments *FRELIMO* also controls that level of government, controlling twenty eight out of thirty three municipalities in the 2003 local elections (Reconstruction National System Survey-Mozambique, 24). This further consolidates power in the hands of the executive, particularly in a country like Mozambique where the ruling party has had the control over the all three branches of government since the end of the civil war.

Transitional Justice and Democracy in Mozambique

Although Mozambique did not conduct a TRC, to structure a comparison between this case and that of Liberia, I look at Brahm's (2007) five goals for a TRC to see if they were met in some other way in Mozambique. If a state like Mozambique is able to meet these goals after a serious conflict without resort to formal methods of transitional justice such as a TRC this may obviate the need for such methods. If they are less able to make the transition, the need for transitional justice is supported. This section will review those five factors and Mozambique's post conflict history and the next section will look at empirical evidence regarding Mozambique's success at achieving a democracy.

Brahm's first factor regarding TRCs was that they contribute to the loss of authoritarian power and help to create democratic alternatives by identifying problems and recommending institutional changes that promote accountability and increase civilian control over the military (23). This did not occur in Mozambique because the state adopted a "forgive and forget" attitude regarding the events of the war. Graybill (2004) notes that Mozambique never seriously considered a TRC or war crimes trials. According to Graybill both sides were afraid that opening inquiry into abuses by the other side would

lead to inquire into abuses by their side and that there was a strong belief in silence rather than justice (1125). The problems that occurred during the war were never addressed and although a written amnesty has not been signed by the government, the peace agreement provided for a general amnesty and Mozambique has made no efforts to prosecute any of the violators from the war. This results in at least a *de facto* amnesty. The Bertlesman Transformation Index (BTI) notes that Mozambique has a monopoly of the use of force and control over both the police and military but that the control is not enough to guarantee peace and safety due to the extremely high levels of corruption. This results in vigilante justice and challenges both democracy and the rule of law. Additionally, BTI notes that the domination of the administration of the state and public enterprise by *FRELIMO* is a major challenge to democracy; this partially results from the failure to remove or prosecute leaders of the ruling party after the peace agreement (BTI-Mozambique, 5). Although the peace was a negotiated peace between *FRELIMO* and *RENAMO*, the continued domination of the political arena by one group impairs Mozambique's ability to resolve disputes.

This failure to provide for transparent and accountable institutions after the conflict is a serious impediment to not only democracy and the rule of law, but also to peace and security. O'Neill (2008) notes among states that did not create these transparent and accountable institutions, none of them have avoided further violent conflicts with the possible exception of Mozambique (10). While there has not been a return to war since 1992, there have been a number of incidents of civil unrest including the bread riots in 2010 which left thirteen dead and 2012 which left several Mozambicans dead (BTI-Mozambique, 2). Such conflicts are a sign of growing unrest that cannot be controlled by the government. These riots are related, at least in part, to the slowing of the Mozambican economy from 2007 to 2012 with an increasing poverty rate that runs counter to its economic growth since the peace agreement (BTI-Mozambique, 2). BTI identifies income inequality as a continuing problem although it

has improved since 2003, with a GINI coefficient of 47.3 in 2003 and 45.6 in 2008 (CIA World Factbook-Mozambique).³⁴

The second goal for TRCs was that they allow divergent groups to be heard regarding their concerns. A TRC would accomplish this by having public hearings that allow the airing of all sides of a conflict to be heard and publicly disseminated. Without a TRC, this did not occur formally in Mozambique. Mozambique has a good record in terms of freedom of speech with the Reconstruction National Integration System Survey (RNISS) report noting that freedom of speech and of the press is guaranteed in Mozambique and that there is little governmental backlash for unpopular positions. This includes the reporting by the media of information about material critical of the government for corruption (RNISS, Mozambique 2007, 12). Despite the fact Mozambique has fairly good experience with freedom of speech, we should not overlook that fact that in times of elections, the government has placed restraints on opposition groups. Also if a TRC had been conducted this would have allowed more specific criticisms during the hearings of the government and the rebel group *RENAMO* over their actions during the conflict; because there was no TRC that did not occur.

The third factor is irrelevant since Mozambique did not conduct a TRC, so the contribution of a TRC to the movement toward democracy cannot be evaluated. The fourth and fifth factors can be combined because they involve some of the same concepts. Brahm (2010) argues that TRCs assist in the removal of enclaves of non-democratic power by naming names of perpetrators (or at least exposing their actions) and contribute to stability and the growth of democracy by “(re)building a sense of shared destiny among groups giving them a stake in the ‘national project’ and through shaming perpetrators, thereby depriving them of support that might otherwise encourage them to protect their interests through extra-constitutional means” (23).

³⁴ The GINI scale of income inequality has scores from 1 (perfect equality) to 100 (perfect inequality). The higher the number the greater the income inequality; Mozambique’s score makes it 37th out of 136 countries (the lower ranking, the worse the inequality).

This has clearly not occurred in Mozambique. The same two parties that fought in the civil war are still the main parties in the government. The president of Mozambique, Joachim Chissano, was a moderate leader who ended the civil war and established a multi-party government in Mozambique. He was not generally connected with war crimes and human rights violations. However, many members of both *FRELIMO* and *RENAMO*, including the leader of *RENAMO*, Afonso Dhlakama, who has run for the presidency in every election since independence, have been connected to war crimes and human rights violations during the war (Vines, 1998). Weinstein (2002) argues that because the two parties involved in the civil war evolved into the parties vying for control of the government, the fear of retribution from a former enemy should they gain control of the government is enormous. According to Weinstein:

In a country where the two leading parties were shooting at one another only a few years ago, the prospect of “payback time” is frightening to contemplate. Unfortunately, Mozambique’s constitution—with its conspicuous lack of federalism, separation of powers, and checks and balances—is tailor-made to become a charter of revenge for sore winners lusting to punish their defeated rivals (153).

Graybill (2004) argues there is concern for peace in Mozambique, noting that even if the current leaders are willing to “forgive and forget”, future generations may not be. He also notes that when individual perpetrators were not at least identified the chance of a return to war intensifies (1127).

Mozambique’s highly centralized government, where the president and his cabinet can appoint all government positions other than Assembly members, down to the district level, makes the presidential election more critical (152). Almost all seats in the legislature have been held by one of the two parties since 1995, with *FRELIMO* winning over 76% of the seats in the 2009 Assembly election (Electoral Institute for Democracy in Africa, 2009 Assembly Electoral Results, January 2010). So, in addition to holding the power to appoint virtually all government positions in Mozambique, *FRELIMO* holds control over the unicameral legislature. Were *RENAMO* to win the presidency they would at least control government appointments and, by manipulating election procedures, conceivably the assembly.

Unlike Liberia's political system where the Unity Party holds the presidency and the power to appoint government jobs but is forced to share power with a variety of political parties because it does not dominate the legislature, Mozambique has been controlled since independence by one party. The creation of at least a *de facto* amnesty by the failure to prosecute anyone for war crimes or human rights violations during the war has allowed both parties, but particularly *FRELIMO*, to benefit financially (RNISS-Mozambique, 2007, 19). RNISS notes the World Bank states that Mozambique

...started the transition (to democracy) with greater continuity between the old and new systems, less developed public administrations, and weaker civil societies tended to adopt a path of partial political and economic reforms that intensified a wide range of rent generating economic distortions and placed only minimal mechanisms for accountability on public officials. This has proven to be fertile ground for the growth of state capture and administrative corruption (30).

RNISS notes that because the *FRELIMO* was in control at the time of the peace agreement and had the only experience in governing it was able to control the peace process to insure it stayed in power. This leaves the other power, *RENAMO*, to have to threaten to return to war to be heard, not an effective way to participate (RNISS-Mozambique, 17). According to Manning (2010) *FRELIMO* manipulated elections rules, particularly prior to the 2009 federal election, to limit opposition and small parties from being able to contest elections. She notes that in the 2009 election in particular there was widespread and systematic manipulation of the system to insure a *FRELIMO* victory (151). Manning also notes because *FRELIMO* came out of the civil war with large amounts of government property to finance its operations it is better able financially to dominate the political scene (153). Because *FRELIMO* controls government it controls the rules of the political game in Mozambique, allowing it to control the state without having to appear authoritarian (154).

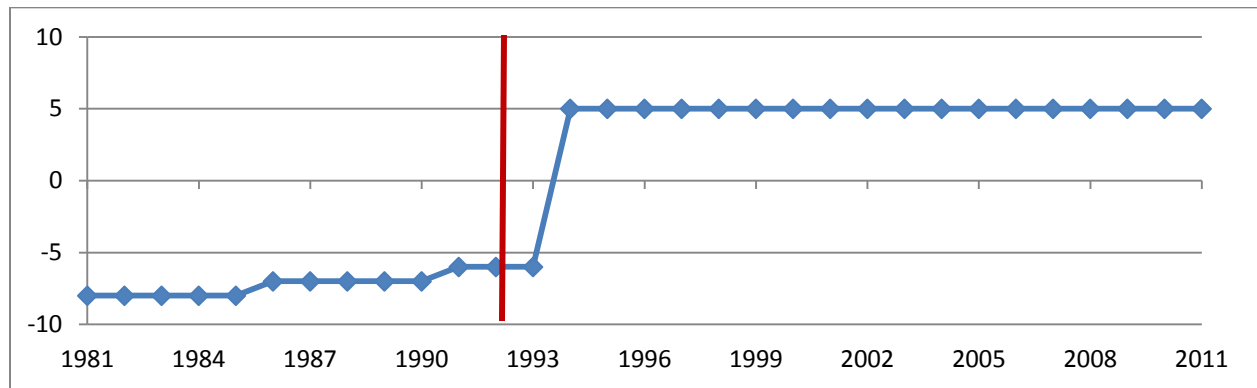
Mansfield and Snyder (1995) discuss the dangers of democratization in post-conflict societies and recommend that elites, particularly from the military, in the authoritarian regime be given golden parachutes in terms of incentives to leave the government but be removed from positions of authority to make the transition to democracy possible (88-89). This has not happened in Mozambique because

there was no removal or neutralization of elites and the military by war crimes trials, TRCs or lustration, the elites have continued to rule the state much as they did prior to the peace agreement.

Measures of Democracy In Mozambique

Like with the Liberian case study, this case study utilizes more detailed data from Polity IV, along with the subset data from Freedom House on individual aspects of democracy. According to Polity IV Mozambique has made great strides in its transition from autocracy to democracy in the post civil war period, but Mozambique has never been a democracy since the inception of the Polity IV index despite these great strides. In 1981, during the civil war, Mozambique scored a -8 out of a possible score of -10 to +10 on the autocracy/democracy scale, with a -10 being a perfect autocracy and +10 being a perfect democracy. In 1992, at the time of the peace negotiations, it had only progressed to a -6, still an autocracy. In 1994, the year of the first election its score improved to a +5, giving it slightly short of a democratic score. Its Polity IV score has remained at a +5 from 1994 to 2012, reflecting the successful election in 1994 but no more strides toward a consolidated democracy since that election. This shows that although they have made some movement toward democracy since the peace agreement, further progress toward democracy has not occurred in nine years. See Figure 6.1 below.

Figure 6.1: Mozambique and Polity IV Scores-1981 to 2010³⁵



Source: Polity IV

Polity IV's index shows that Mozambique has a score of seven out of a possible ten for the first component of democracy, that of Executive Recruitment. This is described as showing "transitional or restricted elections". They note that although Mozambique's elections are considered relatively free and fair, the same party has been in control since 1992. The control by *FRELIMO* is maintained, at least in part, by its control over the electoral process and its ability to use the media and other resources to publicize its candidates. The ruling party chooses the candidates without competition and citizens vote for that party's candidate because there are no other real choices—the only other visible party, *RENAMO*, is incapable of winning enough seats in parliament or contesting the presidency.

Mozambique's elections are contested and *FRELIMO* is not winning with huge margins but the margin of victory continues to increase with each presidential election. The margin of victory over *RENAMO* in the first election in 1994 was 53.3% *FRELIMO* versus 33.7% for *RENAMO*, but in 2009 *FRELIMO* garnered 75% of the vote versus 16.4% for *RENAMO*. The deterioration of *RENAMO*'s position is equally as stark in terms of parliamentary seats, with *RENAMO*'s share decreasing from a high of 117 seats in 1999 to a low of 51 in 2009 while *FRELIMO*'s share went from a low of 129 in 1994 to a high of

³⁵ Vertical line indicates end of the civil war.

191 in 2009. There was a relative balance of 129 seats to 112 seats in the first election in 1994 but the balance has tilted dramatically toward *FRELIMO* by 2009 (Manning, 2010, 153).

Manning notes that not only does *FRELIMO* dominate in the national offices they also control 99% of the municipal assemblies and mayoral positions and all of the provincial assemblies (160). Ostheimer (2005) notes that while the presidential election tends to be the focus of international groups, the impact of election irregularities and fraud is much greater on the parliamentary level and probably resulted, at least in the 2004 election, in the loss of several seats to opposition parties (134).

The last component of the Polity IV score for Mozambique concerns political participation. According to Polity IV, there are several, clearly identifiable political groups in Mozambique, although *FRELIMO* and *RENAMO* are the most powerful. The hostilities between the groups still continue and have resulted in political violence and demonstrations, boycotted elections and secession threats by *RENAMO* in the northern and central provinces. One positive occurrence has been the emergence of a third party, the MDM, which was not part of the polarized civil war years and may be able to offer an alternative for voters. In the 2009 they won a respectable 8.6% of the presidential vote and 8 seats in the parliament, showing they have the ability to become a factor in Mozambique if they can more fully participate (Electoral Institute for Sustainable Democracy in Africa). Political participation is an area, according to Polity IV, where Mozambique is making its best showing, with a score for political competitiveness showing a transition to competitive patterns of participation and scores for regulation of participation showing that groups are stable and enduring and contest elections, although they have great difficulty working with each other (Polity IV Country Reports-Mozambique). However, ten parties other than *FRELIMO* and *RENAMO* had their entire candidate lists rejected by the National Electoral Commission (CNE) in 2009, seventeen other parties were excluded from running in at least one district, and MDM was excluded in nine out of thirteen electoral districts without the possibility of review or redress for the exclusion (Manning, 2010, 156-157).

However, the fact that Mozambique's Polity IV scores have stayed at a +5 since the first election shows that while it is stable, which is good, it is not improving. This may be due to the unresolved conflicts between *FRELIMO* and *RENAMO*. Not long ago Ostheimer (2005) predicted that because there were no opponents poised to contest *FRELIMO* successfully and the political institutions are too weak to provide a check against the government, there was a strong chance Mozambique might return to a one-party authoritarian state (135). Despite Ostheimer's predictions, by 2013 Mozambique has still continued to function as a multi-party state although the 2009 election which was dominated by *FRELIMO* continues to be concerning. The recent attempts by the third party, MDM to become a viable political party are a good sign for Mozambican politics.

Polity IV only measures political or governmental organizations or polities and does not consider civil liberties. The Freedom House index measures both political and civil rights. Mozambique has remained fairly steady from 1994 to 2011 according to the Freedom House scale, similar to its performance in the Polity IV scale; however Freedom House has noted a negative slide in democracy in Mozambique since the election of 2009. According to Freedom House, Mozambique was an electoral democracy from 2007 to 2009, but slipped to a non-electoral democracy in 2010 due to widespread irregularities in the 2009 election, including in the rejection of party lists and tabulation of election results. In 2010 Mozambique's scores for electoral process slipped from the threshold seven out of twelve to a six out of twelve, dropping it from the list of electoral democracies. Their score in political pluralism slipped in the same year, reflecting the concerns regarding the 2009 elections. They have not improved since 2010. Manning (2010) agrees with this evaluation by Freedom House noting that although Mozambique was originally thought of as one of the democratic success stories in Africa, it is now looking more like a single party dominant regime than a democracy due to the manipulation of elections and the continued strength of *FRELIMO* makes democracy unlikely (163-4). She notes that although the ruling party has not engaged in violations of civil liberties they have been able to control

the state by manipulating the institutions that control elections and by the superior economic status they received from being the controlling party when peace was negotiated (154).

Both Manning and Freedom House note widespread corruption (this will be considered under Rule of Law, below) and efforts to restrict or harass journalists and the press, along with periodic violence during political demonstrations. Two other problems with Mozambique from 2010 to date, according to Freedom House, were the food and transportation riots and violence by state security forces and rival parties against political campaigns and rallies (Freedom House-Mozambique-2010). No changes, positive or negative, were noted for between 2011 and 2013 (Freedom House-Mozambique-2011, 2012, 2013).

The Freedom House scores for civil liberties show slight improvements in civil liberties from 2006 to 2013, with improvements in freedom of expression, rule of law and individual rights from 2006 to 2013. The biggest gain, from a ten out of sixteen to a twelve of sixteen occurred in freedom of expression and that right continues to have the highest score for Mozambique (Freedom House-Mozambique). This is consistent with the finding that the Mozambican government has been fairly supportive of freedom of speech but tends to ignore the opinions that are given that are contrary to their policies.

Both the Polity IV and Freedom House scores show a substantial improvement in Mozambique's levels of democracy immediately after the peace agreement but essentially stasis since that time. After the civil war ended Mozambique made substantial gains toward becoming a consolidated democracy, holding their first post-independence elections in 1994 and subsequent elections in 1999, 2004 and 2009. Those elections have been criticized for electoral irregularities and have been boycotted periodically by the minority party *RENAMO*. Racial and ethnic disputes do not divide the country; the biggest division is caused by political divisions between the two main parties who were also the two antagonistic groups in the civil war. Unfortunately, there has been no substantial movement toward

healing those divisions since 1992 and the country appears to be stuck in limbo, partially democratic and partially authoritarian because of the rule of the majority party. This creates animosity between the parties and makes it difficult for them to work together to better. The choice to “forgive and forget” has resulted in a polarized society with unresolved justice claims.

Mozambique’s decision to grant amnesty and to avoid most methods of transitional justice has resulted in relative stability. They have not experienced a return to civil war, which is extremely important for them given the sixteen year length of the previous civil war and the large number of casualties and displaced people as a result of the violence. This stability is the rationale often given for the use of amnesties and the avoidance of war crimes tribunals and TRCs. However, Mozambique appears to be stagnant politically due to the implacable nature of the conflict between *FRELIMO* and *RENAMO* and if the 2009 is an indication, may be sliding back towards repression and autocracy.

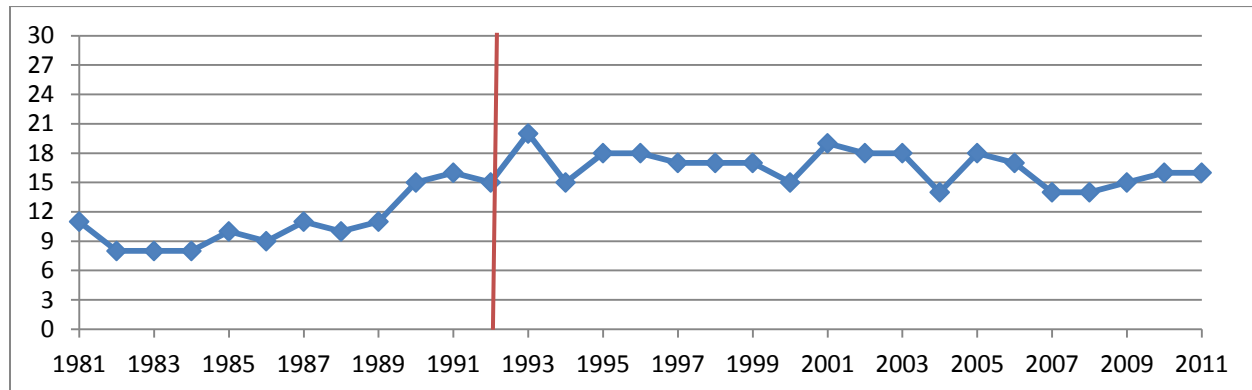
The Effect of a “Forgive and Forget” Policy on Rule of Law

Mozambique did not conduct a TRC or war crimes trials or any other type of transitional justice other than a *de facto* amnesty. The literature suggests that the failure to bring accountability for crimes that occurred during a conflict leads to impunity, a lack of accountability and lack of respect for the rule of law. According to the BTI there several areas of concern in Mozambique with regard to the rule of law, including corruption, the lack of an efficient police and judicial system, lack of judicial independence and the continued use of torture by the police (BTI-2012-Mozambique). These issues reflect the improvement of rule of law to a certain level but the lack of continued growth or improvement.

Figure 6.2 below shows the CIRI index data from 1981 to 2010. When the peace agreement was signed in 1992 the rule of law score improved dramatically from a fifteen to a twenty in 1993, based primarily on an improvement in physical integrity rights across the entire index, including scores on torture, disappearances, extra-judicial killing and in the treatment of political prisoners. Unfortunately,

the scores went down immediately thereafter and in several years returned to the pre-peace agreement levels or lower. The scores improved slightly in 2010 but are still substantially below the 1993 score. This makes it clear there are ongoing problems with the rule of law in Mozambique.

Figure 6.2: Rule of Law in Mozambique-1981 to 2010. ³⁶



Source: CIRI Index

One of the areas where rule of law scores in Mozambique also deteriorated was in the empowerment index, an index which looks at civil liberties in general including freedom of expression and association, freedom of movement, electoral self-determination, freedom of religion, and worker's right. Both Freedom House ³⁷ and BTI note the deterioration of civil liberties in Mozambique, including arbitrary harassment and violence by the police, the use of torture and increased control over the media. Although Mozambique has signed most of the human rights conventions including the Convention on Torture and the Convention on the Rights of Persons with Disabilities, their record for human rights abuses still continues to be a concern (BTI-2012-Mozambique).

BTI notes that *FRELIMO* appeals to Mozambicans because it was the party that obtained independence for Mozambique and therefore has legitimacy with the populace. The party uses this legitimacy to control most aspects of Mozambican life including public administration; because the party

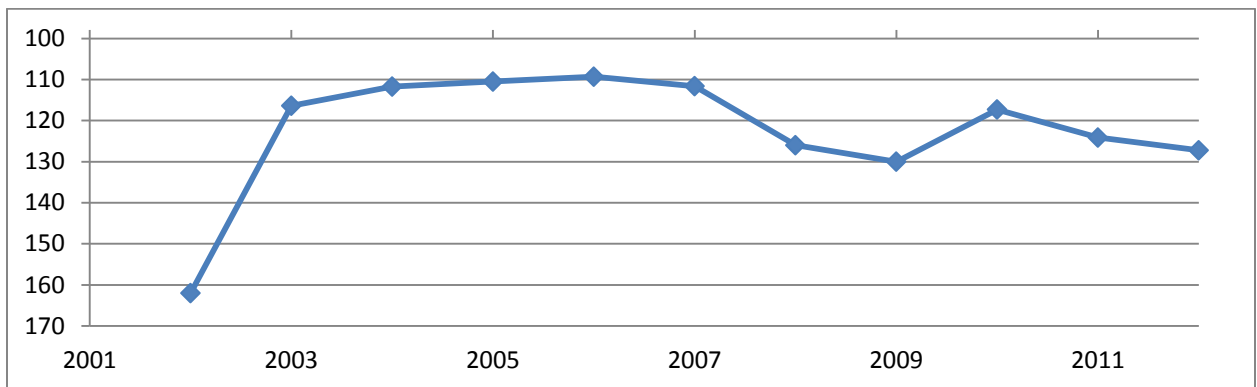
³⁶ Vertical line represents the peace agreement in 1992

³⁷ Noted above in the discussion of democracy and Freedom House.

is so embedded in public life, it can guarantee party members jobs and patronage. BTI notes that it spreads down even to the provincial assembly level, where party members can obtain jobs and incomes in areas so impoverished and lacking in resources that the government does not even have a place to meet (BTI-2012-Mozambique).

This pervasive corruption is also seen in the corruption perception index score for Mozambique. The index has scores from 1999 to 2011 although no data is available for 2001 and 2002. The scores show an increase in the level of corruption but more critically, the status of Mozambique compared to the rest of the world in terms of corruption is also deteriorating. See Figure 6.3 below for the 2003 to 2011 data.

Figure 6.3: CPI Index for Mozambique-2002 to 2012 ³⁸



Source: Transparency International

In 1999, the first year that Transparency International had data for Mozambique it had an adjusted score of 102nd in the world out of 180 countries. A low ranking in the world is good, with one being the least corrupt country in the world out of approximately 180 ranked states. Unfortunately for Mozambique, this was their best position with Transparency International. In 2002 Mozambique's scores deteriorated to 162nd in the world and although they have improved since 2003 they have not

³⁸ The higher the score, the higher the level of corruption in the state compared to other states.

recovered to the 1999 level. By 2012 the scores have improved slightly but their ranking in the world slipped to 127th, showing they are not improving in comparison to the rest of the world.

Transparency International's comparative rankings are based on information from corporate and government sources, including banks, but not on information from citizens within the state. However, in April and May of 2011 they conducted a survey of one thousand Mozambique citizens. 56% of citizens surveyed in 2011 answered that the level of corruption in Mozambique had increased and 23% answered that it has stayed the same. Only 21% believed it had decreased and only 4.9% of them believed it had decreased a lot.

Citizens were also surveyed regarding the institutions that were viewed as corrupt. This is relevant since if the source of corruption is a non-governmental agency it may not be under the control of the government or may not have an effect on the rule of law. They were asked to rate the corruption of a variety of institutions on a one to five scale, with five representing extreme corruption and one representing not at all corrupt. The institution with the highest ranking for corruption was the police, with 58.2% feeling giving them a 5, 21.8% giving them a 4 and 11.6% giving them a 3. Only 7.7% of the population gave them a 1 or 2. In contrast, NGOs and the media both received very low scores for corruption (70.9% for media, 72.2% for NGOs). Interestingly, only 45% of the people surveyed had ever had contact with the police. The judicial system had better scores, with 27% giving them a 4 or 5 and 25.3% giving them a 3. This shows there is more confidence in the judiciary as opposed to the police, although only 19.7% percent of those surveyed said they had had contact with the judiciary, which may explain the difference in scores (Transparency International-Public Perceptions of Corruption-Mozambique).

This belief in widespread corruption in the Mozambican police force is supported by the United States' Department of State. In March of 2012 they issued a report on crime and safety in Mozambique which noted various obstacles to effective policing, including the lack of landline telephones,

transportation, funds for fuel for transportation, the lack of police equipment and low pay for police officers. The report also notes that bribes of even a few dollars can make charges disappear and that “Tolerance of corruption breeds a complacent attitude toward dealing with it in the PRM” (OSAC Crime and Safety Report).

Mozambicans have been surveyed three times by Afrobarometer regarding the views of the rule of law in Mozambique. As part of the survey process in 2008 a briefing paper was issued by Afrobarometer because, as noted in the paper, the rule of law is a great challenge in Africa’s democratic reform process, but even a bigger challenge for Mozambique because of the history of Marxist-Leninist ideology. The paper also notes the even greater likelihood of the subversion of the rule of law in a country like Mozambique which is highly centralized (Afrobarometer Briefing Paper No. 86, 2010, 1).

Afrobarometer looked at survey questions asked in the 3rd round in 2005, the 4th round in 2008 and the 5th round in 2012. The questions and the percentage of people giving different answers to the questions are noted below in Tables 6.1 through 6.3.

Table 6.1: President’s Observance of Rule of Law, 2005, 2008 and 2012

	Never	Rarely	Often	Always	Don’t Know
2005	47	14	9	6	25
2008	28	20	8	5	39
2012	33	17	9	6	35

Source: Afrobarometer-Mozambique

For Table 6.1 Mozambicans were asked to respond to the question “How often does the president ignore the constitution (2005)/the laws of this country (2008) the courts and laws of this country (2012)”. The number of people believing he never ignores the laws or the constitution went down dramatically from 47% to 28% from 2005 to 2008 even though the same president was in office. The number who didn’t know also went up dramatically. After the 2009 election the number of people

believing he never ignores the courts and laws of the country improved slightly from 28% to 33% and the number not knowing also improved. The change from 2005 to 2008 was consistent with a decreasing faith in the office of the president and may have been caused by the change in presidents to the new president, Guebuza, in 2005, with citizens becoming more informed from 2005 to 2008 on the new president. It may also be consistent with a decreasing faith in the rule of law, making the next survey results critical. The fact the percentage of people believing in the president increased is a positive sign for Mozambique, indicating the new president may be inspiring faith.

A second survey question involved citizens' belief that officials observed the rule of law and was again asked in 2005, 2008 and 2012. See Table 6.2 below for the results of that survey.

Table 6.2: Official's Observance of Rule of Law, 2005, 2008 and 2012

	Never	Rarely	Often	Always	Don't Know
2005	26	19	20	18	16
2008	18	22	28	14	19
2012	20	21	28	21	9

Source: Afrobarometer-Mozambique

In 2005 and 2008 Mozambicans were asked the question "How often are people treated unequally under the law?" In 2012 they were asked the question "Are people treated unequally under the law?" People in Mozambique were 38% confident in 2005, 42% in 2008 and 49% in 2012 that the judicial system treats people unequally. This shows that trust in the legal system is deteriorating, with almost half of Mozambicans believing people are treated unequally under the law. This is consistent with a deteriorating belief in the rule of law in Mozambique.

A third survey question involved the punishment of ordinary people as opposed to officials. A belief that ordinary people get punished more often than officials would be consistent with the belief

that officials are able to use corrupt methods, such as bribery or threats based on their official positions, to influence punishment. See Table 6.3 below for those survey results.

Table 6.3: Ordinary People as Opposed to Officials Going Unpunished, 2008 and 2012

	Never	Rarely	Often	Always	Don't Know
2008 Ordinary People	26	27	22	9	17
2008 Officials	21	24	27	9	19
2012 Ordinary People	26	27	18	12	16
2012 Officials	21	28	21	13	17

Source: Afrobarometer-Mozambique

For this table for both 2008 and 2012 people were asked “How often, in this country, do ordinary people who break the law go unpunished?” and “How often, in this country, do officials who commit crimes go unpunished?”. The difference between ordinary citizens’ and officials’ treatment is relatively minor in both 2008 and 2012, showing a belief there is comparable treatment between the two groups, according to the survey but 36% in 2008 and 34% in 2012, or over one-third of participants in both surveys believed officials are often or always allowed to escape punishment and 31% in 2008 and 30% in 2012 believe that ordinary citizens escape punishment. This is indicative of the corruption noted by Transparency International and although it has not deteriorated, the fact there is a consistent belief that ordinary people and public officials go unpunished shows a deficit in the rule of law in Mozambique.

These surveys and the Transparency International Index indicate an increasing and ongoing level of corruption in Mozambique which is incompatible with improvements in the rule of law. Additionally, Mozambique seems to be experiencing an increase in corruption, unlike Liberia which is making some improvement. While both states still struggle with corruption, Mozambique’s political system seems to lead to corruption. This domination is due, at least in part, to the power that *FRELIMO* received from the GPA and the failure to provide for any sort of accountability for leaders; the same leaders during the civil war are in government in Mozambique today. It is possible a TRC would have avoided this by acting as a check on the power of the two warring parties, exposing their actions and demanding some form of accountability. This is also true of Liberia to some extent, but the failure of any political party to

dominate in Liberia (the UP won both the 2005 and 2011 elections but both in a runoff election and the UP has not held a majority in Congress in 2005 or 2011) makes the possibility of addressing corruption more clear. While citizens in both states have discussed concerns regarding corruption, the ability to vote a corrupt party member out of office in Liberia acts as a constraint on corruption. Term limits for the president does as well-the head of the UP is president Johnson-Sirleaf and it is questionable if the party will prevail in 2016 due to the two term limit for the President in the Liberian constitution. This constraint does not exist in Mozambique and although it is not a one party state, only one party has controlled most of the government since independence to today.

The Effect of Amnesty on Mozambique

The General Peace Agreement, negotiated and signed by Popular Assembly, controlled by the ruling *FRELIMO* party, contained a provision for a general and unconditional amnesty for all Mozambicans in 1992, including those held in prison for political reasons and those working with the various rebel factions (Bulletin of the Republic). Unlike in South Africa, there was no requirement of confession for violations of law and no testimony required in front of a truth commission. Instead, everyone was given an amnesty and to date there has been no attempt to prosecute. There is a question as to whether there was actually a signed and implemented amnesty; Hayner (2011) discussed this amnesty with several governmental leaders in Mozambique who asserted there was not an amnesty granted because *RENAMO* refused an amnesty, feeling they had done nothing wrong to need an amnesty (197). Regardless of perception, a general amnesty was granted and even more importantly, the lack of any effort at prosecution since 1992 amounts to a *de facto* amnesty.

According to Hayner, even Human Rights Watch, a group that generally supports war crimes prosecutions, agrees that prosecution would be difficult in Mozambique because atrocities occurred on all sides and because the major actors had tampered with evidence, prosecutions would more likely

have resulted in personal revenge than in justice (198). Although a TRC might have alleviated this concern by allowing all sides to make a record of the events during the civil war without fear of prosecution, a TRC was not considered by Mozambique and trials were rejected out of hand. As noted by Hayner, this has resulted in many people who committed the worst atrocities sitting in Parliament or still involved in the military. She also notes that since atrocities were committed on all sides, including the government side during the war, it would be impossible to accurately hold everyone involved in the conflict accountable (197). Liberia faced this same problem after its civil war. The Liberian its TRC, while trying to create accountability, had produced some of the same results as the amnesty in Mozambique. The failure to carry out the recommendations for prosecution and lustration in Liberia after the TRC mirrors the conditions resulting from the de facto amnesty in Mozambique.

Hayner (2011) also looks at the effect of the general amnesty in Mozambique on Mozambican politics and argues that the failure to prosecute has had an effect on Mozambique. Because *FRELIMO* has stayed in power since the end of the civil war, they have been able to control the transitional justice agenda. They are in control of the government and much of the resources of government, letting them set the agenda for the discussion. Hayner notes that Mozambican politicians, particularly those of third parties, have tried to use the atrocities during the civil war politically without success. Hayner attributes this to the belief that efforts to talk about the past would result in restarting the hate, leading to another war (198-199).

One of the concerns regarding amnesties is the possibility they lead to impunity. Igreja (2007) notes that the effect of the amnesty in Mozambique was to provide for a “culture of denial”, one where no retribution, acknowledgement of suffering, financial compensation, counseling for stress, or mental health services for victims or perpetrators was provided. He predicts that out of this culture of denial could come the collapse of the post-war communities of Mozambique, meaning either the return of the violence of the civil war or an alienation of the victims from the rest of society because of the failure of

society to recognize or deal with the effects of the violence (22). There are, unfortunately, few case studies of Mozambique and Igreja's is one the few that addressed directly the effect of the war and amnesty on the people and in particular in one region in Mozambique, Gorongosa. Unfortunately the study was conducted in a stronghold area of the *RENAMO* and is not, therefore, indicative of the entire country, but does provide some insights into the effect of the amnesty.

Colvin (2007) looks comparatively at Mozambique, Namibia, Malawi, South Africa and Zimbabwe and their efforts at reconciliation. He notes that Mozambique had their demobilization and reintegration of former combatants well-funded and had significant international cooperation, but were unusual in the insistence on using none of the methods of transitional justice such as trials, memorials, TRCs or reparations out of fear that these methods, particularly that of memorialization, will provide a place that could exacerbate tensions by providing an ongoing reminder of the events (324, 328).

After the GPA, Mozambique's leaders chose a different approach to democratization and rule of law than Liberia. They were rewarded with some initial success. Eleven years after the end of the war the country is still at peace and despite some food riots and threats by the rival party *RENAMO*, has been successfully controlled by its current government. It was able to conduct four violence-free elections and has achieved substantial economic success. It also improved in rule of law although its record on corruption has begun to deteriorate in the past thirteen years. The growth of a third party, MDM, is a positive sign for Mozambicans dissatisfied with the status quo two parties from the civil war.

However, Mozambique appears to be unable to make further progress on democracy since the initial post-GPA gains. Freedom House reports that democracy is actually deteriorating and the allegations regarding restrictions on political participation by MDM candidates in the 2009 election are disturbing. The increasing level of corruption, and perhaps more importantly, the perception by citizens that corruption is endemic and increasing, is concerning for future improvements in the rule of law.

Mozambique made a conscious choice at the end of the civil war to offer a *de facto* amnesty for all perpetrators and to not conduct a TRC or other type of commission regarding the events of the war. The result is the continued political domination of both of the parties from the civil war, *FRELIMO* and *RENAMO*, and many of the same commanders and leaders from the war. Political elites have not been removed from either party and they continue to experience difficulties in working together for Mozambique.

Comparison of Mozambique and Liberia

Overall, despite concerns over the amnesty and lack of transitional justice , Mozambique, like Liberia, has been able to maintain the status quo in terms of both democracy and the rule of law since the conclusion of their conflicts. In Mozambique, however, corruption appears to be growing and there has been additional civil unrest resulting in small numbers of civilian deaths over economic issues. What is most concerning about Mozambique, however, is the fact that it has been unable to overcome the political and ideological divide that led, in large part, to the brutal civil war. Calls by *RENAMO* for secession of six northern and central provinces are a sign this conflict has not been resolved and continues to create problems for Mozambique and interfering with its transition to democracy and the rule of law.

The question is, of course, would Mozambique have been better able to resolve this conflict if they had utilized a TRC in place of amnesty and did Liberia benefit from utilizing a TRC? Both Liberia and Mozambique experienced intense conflicts, with large numbers of battle deaths and an extended war. Neither was a democracy prior to the civil war and both emerged with higher levels of democracy and the rule of law after their respective peace agreements were signed.

Both Liberia and Mozambique have similar scores regarding democracy and rule of law after their civil wars. Liberia chose to allow a *de facto* amnesty to occur and, although it carried out and

publicized results of a TRC, the government did not follow the recommendations of the TRC for lustration and prosecution of offenders. This has resulted in acknowledged offenders such as Prince Johnson continuing in political office while others walk freely with no fear of prosecution. Despite the fact that over 60% of the population wants offenders to be held accountable, this has not happened yet in Liberia. While there is no direct evidence that the TRC has improved democracy in Liberia nor does it appear that the TRCs has cause democracy to deteriorate or the state to destabilize. Polity IV notes some positive signs in Liberia, including improvements in the electoral processes and political participation and in constraints on the executive. However, Liberians continue to distrust their government and particularly their judicial system. The fact the recommendations of the TRC were made and then not followed through on has not helped with the creation of trust. Even if a TRC had been held, Mozambique would have had similar resource problems to those experienced by Liberia, although Mozambique experienced substantial economic growth after the GPA and may have been better able to provide for compensation, memorials or a TRC than Liberia.

Mozambique consciously chose to not seek transitional justice and to leave in power the same two parties that were on opposite sides in the civil war. The result of that choice is that the two parties who were opponents in the civil war remain in power, with *FRELIMO* continuing to dominate the government. If a TRC had been conducted it is possible either prosecution or lustration could have occurred, but at minimum the facts about the civil war would have come out and might have influenced people's support of *FRELIMO*. *FRELIMO*'s control of the electoral process has caused Freedom House to remove Mozambique from the list of electoral democracies due to election irregularities, an ominous sign for Mozambique given the difficult relationship between the two parties. Mozambique is now experiencing deterioration in democracy, unlike Liberia.³⁹

³⁹ It should be noted that Liberia's civil war ended eleven years after Mozambique's.

The question, of course, is whether a TRC would have changed this stalemate position in Mozambique. That is impossible to answer with certainty, particularly given Liberia's experience with its TRC recommendations. However, at worst it might have cleared up the record regarding the actions of both parties during the war and allowed the emergence of a different party or leaders. At best, it might have led to accountability of the worst offenders and reduced the power of *FRELIMO*.

Liberia has done better in rule of law: since the decision to conduct a TRC in 2005 Liberia improved in both CIRI scores and in corruption relative to the rest of the world. There has, however, been no improvement in CIRI scores since the commencement of the TRC and it is possible that the failure to adopt the recommendations of the TRC for prosecution and lustration may impact rule of law. The fact that more than half of Liberians want accountability for the violations during the civil war and have not to date received it may have an impact on rule of law. Additionally, the fact that the judicial system remains corrupt and expensive means trust in law has not occurred. That is not directly attributable to the TRC, nor are the economic problems that still plague Liberia and certainly have an impact on the ability of the government in general and the judicial system and police force in particular to function adequately.

Mozambique's experience with the rule of law is similar to their experience with democracy. Some gains were made immediately after the end of the civil war, but without any accountability corruption has become rampant in Mozambique and in fact is worsening. Mozambique has experienced reductions in its CIRI scores, particularly for empowerment and in 2010 and 2012 experienced riots that involved deaths. The riots did not involve enough deaths to reach the 25 battle death threshold for PRIO, but are certainly concerning, as was Mozambique's reaction to the riots. Instead of trying to remedy the cause of the riots, the government's response was simply to pacify the rioters by reducing the price of food again, at best a short term remedy. Mozambique has had over 10 years to improve its rule of law scores and instead of improving them, has actually allowed them to deteriorate.

Despite the issues of Liberia's TRC it appears to be consistent with the quantitative findings of this dissertation. Liberia had an intense conflict, created a TRC and is making movement toward an improved rule of law and has achieved a democracy. It certainly has not completed the transition to democracy but it has conducted two fair and free elections since the GPA and has improved dramatically its physical integrity rights and empowerment rights, both critical to the improvement in rule of law. It remains to be seen if the limitations of the TRC affect Liberia in the future but it appears to at least be stable at this point.

Mozambique, on the other hand, experienced a very intense conflict but has not had the benefit of any transitional justice methods. It initially made some improvements in democracy and rule of law after the GPA but in the past few years, and particularly since the 2009 election, has scores in democracy and rule of law that are lower than Liberia's and appear to be regressing. It also continues to experience high levels of corruption which are increasing rather than improving.

It may be premature to look at Liberia's experience to see if it supports a relationship between TRCs and democracy and the rule of law because the TRC concluded so recently. The successful 2011 election, two years after the conclusion of the TRC is an encouraging sign. The continued improvement in corruption scores and other scores are also encouraging and support the existence of a relationship.

CHAPTER SEVEN: ARE TRCS BENEFICIAL TO A STATE SEEKING DEMOCRACY AND RULE OF LAW?

TRCs have been conducted since 1981 at great cost, both economic and non-economic, to the states and the people participating in the. Have the benefits of TRCs in terms of democracy and rule of law outweighed the costs? This is a complicated question. While this study has helped to provide part of the answers to the question, many questions still remain for future study. Several issues regarding the relationship were outlined in the Chapter Two review of the literature. This concluding chapter provides brief recap and an application of the information from the quantitative data and the case studies to these various issues.

Six hypotheses, derived from a review of the literature, were analyzed in this dissertation using quantitative methods. The six hypotheses are:

Hypothesis One: There is a positive relationship between a state having conducted a TRC and an increase in democracy.

Hypothesis Two: There is a greater change in democracy in post conflict states that utilized a TRC as opposed to amnesties.

Hypothesis Three: States that experience intense conflicts with cumulative battle deaths in excess of one thousand and conduct a TRC experience higher democracy scores than states with intense conflicts that do not conduct a TRC.

Hypothesis Four: There is a positive relationship between a state having conducted a TRC and an increase in rule of law.

Hypothesis Five: There is a greater change in rule of law in post conflict states that utilized a TRC as opposed to amnesties.

Hypothesis Six: States that experience intense conflicts with cumulative battle deaths in excess of one thousand and conduct a TRC experience higher rule of law scores than states with intense conflicts that do not conduct a TRC.

The Relationship Between TRCs and Democracy

This relationship has been one of the hotly contested issues regarding TRCs since the first TRC were conducted. Some authors, such as Olsen, Payne, and Reiter (2010) conclude that there is actually a negative relationship between TRCs and democracy probably because TRCs do not involve prosecutions of offenders and therefore lead to a culture of impunity and because they do not conclusively eliminate the leaders of the repressive regime, causing a potential backlash (134). The author of the other main empirical study, Wiebelhaus-Brahm (2010) agrees they are not related but argues that many of the important changes states make to achieve democracy, such as electoral systems and constraints on the executive branch are not related to the activities of a TRC and in fact often occur before the TRC is conducted (2005). He does note, however, that in two of his case studies, El Salvador and Chile, substantial democratic progress was made but relates that progress to criminal prosecutions and the removal of spoilers by the government (26).

The empirical tests in Chapter Four concluded there was a positive relationship between TRCs and democracy. A higher percentage of states that conducted a TRC had positive changes in democracy scores than states with a conflict that did not use a TRC. The regression analysis supports the means tests, with conducting a TRC being positively related to democracy score and being statistically significant. This supports Hypothesis One, however the variable of TRCs provided less than 3% of the explanation for democratic change and none of the other variables such as amnesty, a TRC and an amnesty or cumulative intensity being statistically significant. This demonstrates that while TRCs are positively related to democracy they provide a minor part of the explanation.

The findings here are different from those of Olsen, Payne, and Reiter (2010), another empirical test of this relationship. Their study found a negative relationship between TRCs and democracy (146). There are several possible explanations for the differences in the two findings. First, Olsen, Payne, and Reiter used a different universe of states than used here. Some of the TRCs included in their study do

not fit the common definition of a TRC as used in this dissertation, including Kenya and an early South African TRC. Kenya was a single incident TRC and the early South African TRC involved a commission held by the African National Congress (ANC), which was a non-state actor.

Second, Olsen, Payne and Reiter include many TRCs that were conducted in democracies, including Germany, Lithuania, Poland, and South Korea. This has an effect on democracy scores since improvement in democracy is impossible if a state already receiving a maximum score for democracy and will be minimal if they are near the top of the scale for Polity IV. This makes it hard to measure change.

Third, and most critically, their study did not compare states experiencing TRCs to states that had conflicts and did not conduct a TRC. Instead, in their study 161 states were examined, including all of Europe and other first world states such as the United States, Japan and Australia. The only states that were excluded were those with a population of less than one million people (Olsen, Payne, and Reiter, 2010, 29). The inclusion of states that did not experience a conflict makes comparison more difficult since states experiencing a conflict have different challenges for democratic change than states without conflicts. While the transition from autocracy to democracy is challenging for any state, states that have experienced conflicts face problems with rebuilding infrastructure damaged in the conflict, rehabilitating and reintegrating combatants, often children, rebuilding judicial institutions, and regaining control over the military that are not faced by other states.

The first two differences are fairly minor, although the inclusion of TRCs in states that were fully consolidated democracies with Polity IV and Freedom House scores at the top of the scale can have an effect. More troubling is the inclusion of all states with populations in excess of one million as a comparison to the states experiencing a TRC.

Wiebelhaus-Brahm (2010) also conducted a quantitative analysis of the relationship between TRCs and democracy in addition to cases studies of the four states of South Africa, Chile, El Salvador and

Uganda. His case studies showed no direct relationship between the TRC held in each state and democracy, although he points out that modest gains were made in democracy in all of his case study states, more clearly in South Africa and Chile where the commission's work helped reduce support for the military and for undemocratically elected Senate seats (50, 78).

For his quantitative study Wiebelhaus-Brahm used data from twenty nine TRCs, including TRCs in two democracies (Germany and South Korea). His universe of TRCs was smaller than that used in this dissertation partially due to the fact he did not include any TRCs after the Liberian TRC in 2005. However, although he uses the same definition as used here there is no explanation for the exclusion of TRCs in Afghanistan, Algeria, Burundi, Central African Republic, Honduras, and Lebanon, among others (134). The exclusion of these generally recognized TRCs and the inclusion of two TRCs in long term democracies can have an effect on his findings as discussed above. He also compared states conducting TRCs to 157 states in the world, regardless of whether they experienced conflict, similar to the approach used by Olsen, Payne, and Reiter (137).

His quantitative study shows no relationship between TRCs and democracy (140-141). He explains the apparent contradiction between the case studies and the quantitative study primarily by noting that the case studies focused on effects on democracy that are not measured by Polity IV and Freedom House, the two indexes he used for the quantitative study. He also notes that methodology may be a problem, including concerns that by treating all TRCs as the same regardless of procedures, funding, timing and issues masks very real differences that may affect the ability to influence democratic change (142). This dissertation does not discuss the difference in procedures in TRCs either but this is an issue that needs further study.

To reiterate, then, the difference in the quantitative findings between this study and the Olsen, Payne, and Reiter and Wiebelhaus-Brahm studies may relate to three factors-the choice of TRCs, my exclusion of TRCs that were conducted in democracies and my choice to compare states conducting

TRCs to states that had conflicts (rather than all states with populations in excess of one million people). I argue that the comparison of states conducting TRCs to other states with conflicts is a better measure of the relationship for two reasons. First, states that are already democracies cannot experience much change in Polity IV scores because they are already at or near the top of the scale for democracy. This acts to underreport change in democracy because change in scores is difficult or impossible. Second, states experience conflicts share attributes in common that they do not share with states that have not had armed conflicts with battle deaths. They face challenges to safety and security that make democratic change in terms of lessening executive control and increasing civil liberties that may give rise to protests and challenges to the government more problematic. They also face demands for reintegration and demobilization funds, demands for mental health counseling and health care and damages to infrastructure that make democratic change more difficult economically. Comparing a war torn state with almost one million dead and more citizens internally and externally displaced like Liberia to a state with a long history of peace like Switzerland does not appear to be a good comparison. Comparing it to Mozambique, which experienced many of the same challenges seems to be a better point of comparison.

Additional material was provided in the case studies regarding the relationship between TRCs and democracy. The case study on Liberia shows that although Liberia did experience a substantial increase in its Polity IV scores, from a +1 to a +6, the change occurred before the TRC was conducted. In the years since the TRC was begun there have been no changes in Liberia's Polity IV score. It should be noted that Liberia experienced a hotly contested election in 2011 and was able to maintain its democracy scores despite the stresses from the election, but the lack of improvement in democracy despite positive improvements in Liberia shows the TRC did not lead to changes in democracy in Liberia. Chapter Five discusses some of the reasons for this failure in the context of Brahm's five benefits to democracy from a TRC, particularly the failure to remove enclaves of non-democratic power and the

failure to provide accountability because of Liberia's refusal to implement the TRC recommendations. The case study of Mozambique shows a similar pattern, with some initial improvement after the peace agreement followed by no change in democracy scores thereafter. However, since Mozambique's civil war ended in 1992 it has had twenty years to show improvement compared to Liberia's seven years since the beginning of the TRC.

TRCs as Opposed to Amnesty and Democracy

Both amnesties and TRCs have been used as transitional justice methods since the 1970's and are often considered poor alternatives to war crimes trials since they do not provide the same level of accountability as seen in war crimes trials. The means test in Chapter Four concluded that states that the highest of states to have positive changes in democracy scores conducted a TRC and issued an amnesty followed by states that conducted a TRC and did not issue an amnesty. The lowest percentage of positive changes in democracy scores were seen in states that neither conducted a TRC nor issued an amnesty. This supports Hypothesis Four. However, the multivariate regression analysis in Chapter Four concluded there was no statistical relationship between amnesties or TRCs coupled with amnesties and democracy, although both variables were positive. Therefore the support for Hypothesis Two is weak.

Olsen, Payne, and Reiter (2010) include amnesty as an independent variable in their empirical study of transitional justice, while Wiebelhaus-Brahm (2010) does not. His only consideration of amnesties was in his case studies in the context of amnesties role in neutralizing opponents by offering them amnesty to avoid further outbreaks of violence (88). Olsen, Payne, and Reiter looked at amnesties and concluded that amnesties alone had no statistically significant effect on human rights, while amnesties coupled with trials had a positive relationship with human rights while TRCs with amnesties have a negative effect (144). This study shows that for states that conducted a TRC or experienced a conflict amnesties can be helpful if coupled with a TRC while states that did not conduct a TRC or an

amnesty experienced the lowest percentage of states experiencing improvements in democracy and rule of law. Because this dissertation did not look at war crimes trials the findings are different than Olsen, Payne, and Reiter's findings, but the positive findings regarding TRCs and amnesties is contrary to their findings. The difference may be explained by the difference in the choice of cases or in the differences between human rights, as studied by them, and rule of law as used in this dissertation.

With regard to the case studies, Liberia did not have a written amnesty although the General Peace Agreement left that possibility open. Mozambique did include an amnesty in its General Peace Agreement. Regardless, the failure of Liberia to pursue prosecution of offenders is a *de facto* amnesty at this point ten years after the peace agreement. There has been a failure to prosecute offenders in both states.

In Liberia the effect on the rule of law is unclear. More than half of the population wants accountability for offense committed during the civil wars and they have not received it. Offenders, or at least those named in the TRC report as offenders, continue to serve in the legislature and as the president of the country. However, the discussion of amnesty occurred in 2003 and Liberia's rule of law scores increased dramatically after the peace agreement was signed. Despite the failure to prosecute offenders, physical integrity scores have increased and torture, extrajudicial killings and kidnapping has been reduced. Liberians enjoy freedoms of speech and association and were able to have two successful elections in 2005 and 2011 that were not followed by large amounts of violence. It is questionable what effect prosecutions would have at this point given the relative peace in Liberia. Has the failure to prosecute kept Liberia from making further advances in rule of law? It is hard to say, but there is no evidence at this point that shows this.

In Mozambique the effect of the amnesty is more dramatic. It resulted in the two parties who were the primary offenders during the civil war, staying in power at the conclusion of the civil war. The enclaves of offenders have not been removed in Mozambique, similar to the situation in Liberia, but

because the war was fought primarily over political ideologies, the fact there has been no accountability is of more importance in Mozambique. Like Liberia, Mozambique saw an immediate rise in its rule of law scores after the peace agreement, but it has been unable to maintain those higher scores and in fact has begun to slip in both CIRI scores and in terms of its battle with corruption. Not only has the power structure dictated the type of transitional justice here, but the lack of accountability has led to the continuation of that power structure.

The Relationship Between TRCs and Rule of Law

This relationship has become part of the literature on TRCs more recently as the focus has turned from democracy more to the impact of TRCs on rule of law. The focus has changed because there is an increased awareness that TRCs may be more closely related to the concerns of rule of law, including physical integrity rights and empowerment rights than to broader aspects of democracy. Rule of law ties into the creation of trust in governmental institutions like the police and judiciary and is related to the aim of TRCs.

The empirical tests in Chapter Four show a positive relationship between TRCs and the rule of law, with an increase in CIRI scores of 4.085, and that TRCs were a larger part of the explanation of changes in rule of law scores, particularly in states that had good democracy scores and conflicts of minor intensity. The explanatory power of TRCs was much higher, with the combination of variables providing nearly 45% of the explanation for changes in rule of law. The means test supports this finding, showing that states which conducted TRCs had higher levels of human rights than states that did not. This testing supports Hypothesis Four.

The same comments with regard to the empirical studies of the relationship between TRCs and democracy apply to the relationship with rule of law. Olsen, Payne, Reiter and Wibelhaus-Brahms' studies compare states conducting TRCs to all states with populations over one million. This has the

same complications present with democracy. Additionally, they measured for impact on human rights rather than rule of law, using the physical integrity index and the political terror scale. Both measure something that is part of rule of law, but not all of it as noted in Chapter Four.

The means test in Chapter Four shows that a higher percentage of states conducting a TRC experience positive changes in rule of law scores than states that did not and the percentage of states experiencing a negative change over the five year period after the TRC or the end of the conflict was virtually identical. More states conducting a TRC have a positive change or no change than states not conducting a TRC. The multivariate regression analysis shows a positive relationship that is statistically significant and along with the other variables studied provides almost 45% of the explanation for the variance. This supports Hypothesis Four.

Liberia's rule of law score rose dramatically from 9 to 18 in 2004, before democracy improved and before the first election after the peace agreement. It then rose to a high of 21 in 2005, the year of the first election. During the TRC the rule of law score actually deteriorated slightly, from a 20 in 2006 to a 17 in 2009, the year the TRC was concluded and the report was issued. It should be noted that at the time of writing, Liberia had only had one year of CIRI scores since the conclusion of the TRC, not nearly enough time to see any real change in rule of law. Also, Liberia is experiencing substantial improvements in corruption, which is a critical issue for improvement of the rule of law and is not measured by CIRI.

Problematically, however, the TRC in Liberia recommended prosecutions and lustration in its final report. Prosecutions have not started and there appears to be no political will to conduct them. Lustrations were declared unconstitutional, devaluing the TRCs recommendations. This has resulted in the continued presence of people accused of committing war crimes in the Presidency and in the Congress and has made it more difficult for Liberians to have trust in their government.

Mozambique has experienced a similar pattern in changes to the rule of law as Liberia except its decline in the rule of law was earlier and larger. Immediately after the peace agreement scores for rule of law improved. There has been a steady decline in rule of law scores since then, particularly in physical integrity scores. This is concerning since it shows that Mozambique might be slipping back into the patterns of human rights abuses it had during the civil war. The growth in corruption is also concerning. Both may relate to the failure to provide for accountability for both sides in the civil war and the fact that one, *FRELIMO*, has a firm grip on the government, further reducing any accountability. Although Mozambique has not turned back to civil war there have some riots and civil unrest and deterioration of freedoms that are compatible with entrenched elites from the former regime that face no accountability. This is exacerbated by the fact that the only other party with power in Mozambique, *RENAMO*, is unmotivated to push for accountability since it would result in their members also being held accountable for war crimes.

TRCs as Opposed to Amnesty and Rule of Law

The means test in Chapter Four for rule of law had somewhat different results than that for democracy. While the highest percentage of states with positive changes in rule of law were those that conducted a TRC and issued an amnesty, the differences among the other three groups-states that conducted a TRC and did not issue an amnesty (50.0%), states that did not conduct a TRC but did issue an amnesty (40.6%), and states that did not conduct a TRC and did not issue an amnesty (43.8%) were within ten percentage points of difference and had similar levels of negative scores. The multivariate regression analysis shows that states that conducted a TRC had somewhat higher scores than states that issued an amnesty, issued both an amnesty and conducted a TRC or did none of the methods of transitional justice and the differences were all statistically significant. Although the differences in the means tests are minor, the two tests provide support for Hypothesis Five.

There has been a failure to prosecute offenders in both states. Liberia did not have a written amnesty although the General Peace Agreement left that possibility open. Mozambique did include an amnesty in its General Peace Agreement. Regardless, the failure of Liberia to pursue prosecution of offenders is a *de facto* amnesty at this point ten years after the peace agreement.

In Liberia the effect of this failure to act on the rule of law is unclear. More than half of the population wants accountability for offense committed during the civil wars and they have not received it. Offenders, or at least those named in the TRC report as offenders, continue to serve in the legislature and as the president of the country. However, the discussion of amnesty occurred in 2003 and Liberia's rule of law scores increased dramatically after the peace agreement was signed. Despite the failure to prosecute offenders, physical integrity scores have increased and torture, extrajudicial killings and kidnapping has been reduced. Liberians enjoy freedoms of speech and association and were able to have two successful elections in 2005 and 2011 that were not followed by large amounts of violence. It is questionable what effect prosecutions would have at this point given the relative peace in Liberia. Has the failure to prosecute kept Liberia from making further advances in rule of law? It is hard to say, but there is no evidence at this point that shows this.

In Mozambique the effect of the amnesty is more dramatic. It resulted in the two parties who were the primary offenders during the civil war, staying in power at the conclusion of the civil war. The enclaves of offenders have not been removed in Mozambique, similar to the situation in Liberia, but because the war was fought primarily over political ideologies, the fact there has been no accountability is of more importance in Mozambique. Like Liberia, Mozambique saw an immediate rise in its rule of law scores after the peace agreement, but it has been unable to maintain those higher scores and in fact has begun to slip in both CIRI scores and in terms of its battle with corruption. Not only has the power structure dictated the type of transitional justice here, but the lack of accountability has led to the continuation of that power structure.

The Relationship Between Cumulative Intensity and Democracy and Rule of Law

The final two hypotheses, Hypothesis Three and Six, relate to the effect of intense conflicts with large number of battle deaths on democracy and rule of law. Because both dependent variables have similar relations to this independent variable they are discussed together in this section. The effect of intense conflicts on democracy and rule of law is a fairly new concept and there is little discussion of it in the literature. The discussion that exists concludes, logically, that intense battles are likely to be problematic for states at the end of the conflict and that their levels of democracy and rule of law will be lower.

The hypotheses for this variable posit that states that experience intense conflicts and conduct a TRC will have higher levels of democracy and rule of law than states that do not conduct a TRC. For both democracy and rule of law the test of means shows that a higher percentage of states with intense conflicts that conduct a TRC experience positive changes in democracy and rule of law. For democracy the difference is 61.5% compared to 40.6%, for rule of law the difference is 52.0% compared to 21.9%. The regression analysis for democracy shows that cumulative intensity is negatively related to democracy, at -1.672 but not statistically significant, while it is greater for rule of law at -4.015 and is statistically significant. These two tests are consistent because TRCs are positively related to both democracy and rule of law and both tests also support the two hypotheses.

Strengthening of the Legal System

Many authors, including principally Brahm (2007) argue that TRCs assist in the transition to democracy by improving government institutions, improving civil liberties and exposing the role of government in the commission of those abuses. This allows the growth of the judiciary and its ability to act as a check on the other branches of government and the police and improves horizontal accountability within the state (24). Here, four additional questions are explored with reference to the

case studies of Liberia and Mozambique. First, did the TRC strengthen judicial institutions in Liberia, which could lead to future improvements in rule of law in a way not experienced in Mozambique? Second, were there other improvements in democracy and rule of law that resulted from the Liberian TRC that were not experienced by Mozambique? Third, was the TRC destabilizing for Liberia as often discussed in the literature? And lastly did the TRC work to change the environment of evil that existed prior to the TRC?

USAID in its 2009 evaluation of Liberia's rule of law programs noted a number of deficiencies, including the lack of political will, infrastructure, awareness, societal consensus, accountability, and donor coordination. Many of these are not attributable to the TRC and not part of its agenda, including the lack of infrastructure, but the failure of accountability, political will and societal consensus clearly are related to the TRC. As noted above in Chapter Five the only thing most Liberians agree to about the legal system is that it is too expensive and you have to bribe judges. The failure to follow up on TRC recommendations for lustration or prosecution show a judicial system that is unable to provide redress for even the most egregious violations and certainly impacts trust in the system.

In Mozambique because there was no TRC there was no failure to follow recommendations. BTI, however, notes that because *FRELIMO* continues to dominate the government they are able to appoint judges that support their party and are often politically motivated (BTI-2012 Report-Mozambique, 10). The failure of *RENAMO* to take responsibility for its actions or to press for accountability adds to the problems with the judicial system. The widespread corruption in the judicial system also has a detrimental effect on the judicial system and is related to the fact that elites from both parties, but particularly from *FRELIMO* were allowed to continue to govern without consequences. BTI notes that a patronage rather than political competition system runs Mozambique and there is declining trust in the Presidency (BTI-2012 Report-Mozambique, 10, 13). The fact of a general, unconditional amnesty in Mozambique, coupled with a concerted effort to ignore and forget war crimes

and human rights abuses appear to have led to an inability in Mozambique to reduce corruption and provide a judicial system that provides justice to the population.

Changes in Democracy and Rule of Law That Were Improved by a TRC

Wiebelhaus-Brahm (2010) also argues that even if TRCs do not make a large change in democracy and rule of law in states conducting them, there may be some changes that would not have occurred without the TRC. For example, he points to the prosecution and vilification of perpetrators of human rights abuses in Chile, including the former dictator Pinochet that might not have occurred without the TRC. He also points to purges of former leaders and the provision of information used to keep former leaders from continuing in office. He does note, however, that these changes might have occurred without the TRC and that he observed this phenomenon for his case study states, not all states with TRCs.

In Liberia neither has occurred. The TRC named names and recommended lustration and prosecution of various offenders. To date only one has been prosecuted, Charles Taylor. Taylor's ex-former wife, Jewel Howard Taylor continues to serve in the Liberian Senate as does Prince Johnson who also ran for the presidency in 2011 and came in third.⁴⁰ Although 60% of Liberians answered in response to a question in Afrobarometer that people should be held accountable for human rights abuses, little accountability has occurred. The heavy support for Prince Johnson and Jewel Taylor, as well as for President Johnson-Sirleaf who not only was not lustrated but also was re-elected in 2011 shows there have been no changes from the TRC in terms of prosecution or vilification. There have also been no purges and former leaders continue to serve in office without any detriment from the TRC report.

⁴⁰ The indictment for Charles Taylor was issued on June 4, 2003, two years before the Charter of the Liberian TRC was created.

Neither has occurred in Mozambique either, although given the substantial involvement in government of both *FRELIMO* and *RENAMO* the situation is even worse than in Liberia. At least in Liberia there has been a debate regarding lustration and prosecution. Mozambique's policy of "forgive and forget" has made any accountability impossible and the fact that both of the major parties from the civil war are still the major parties has made any of these smaller effects impossible. There have been no purges of leaders from either side in the civil war and no attempts at lustration.

TRCs as Stabilizing or Destabilizing to the State

Wiebelhaus-Brahm (2007) also looked at the question of destabilization that is alleged to come from transitional justice. He notes that critics of TRCs argue they can be destabilizing and in fact have a negative effect on democracy, with perpetrators who feel threatened by the TRC taking steps to protect themselves (26).

This argument can only be explored in relation to Liberia because of its TRC and appears to have little validity. Liberia's democracy improved at the same time as the TRC was being proposed and their Polity IV scores for democracy have remained steady since the TRC concluded. On the other hand, the fact that Liberia's TRC recommended lustration of President Johnson-Sirleaf and prosecution of some offenders did result in death threats against members of the TRC, including the chairman Jerome Verdier (bbc.com). However, those were reported in 2009 and there is no record of any actual violence against the members, nor has there been a return to civil war. Liberia had a successful, although hotly contested, election in 2011 which did not result in much violence or civil unrest. The TRC has either had no effect on Liberian democracy or has had a positive, not destabilizing effect, or more likely the lack of political will to enforce the recommendations of the TRC has resulted in stability.

TRCs' Role in Changing the Environment of Evil

The last issue regarding the relationship between TRCs and the rule of law involves the concept that TRCs, by dealing with the past in truth-telling, can help rid a state of the environment of evil caused by the conflict. This is an interesting argument, raised by Dimitrijević (2006), among other authors, and works as a justification for a TRC that transcends its ability to bring about democracy and rule of law, although it may be related to both. The argument is that looking at the horrible atrocities in the past such as Germany's actions in World War II and Serbia's actions in the Yugoslavian civil war, forgiving and forgetting, rather than using a TRC, results in people not knowing right from wrong and being unable to change attitudes about the rights of all people. This will, inevitably, lead back more conflicts (371).

Unfortunately this does not appear to have occurred in Liberia as a result of the TRC. As noted in Chapter Five, according to the Berkley Human Rights Center, although 73% of Liberians had heard of the TRC, 91% of Liberians knew little or nothing about what happened in the TRC (Human Rights Center, 2011, 69-71). Although they may have heard the discussion regarding the events without being familiar with the TRC this lack of knowledge may also have led to a lack of support for the recommendations of the TRC. This is disturbing since the report and recommendations were widely disseminated in Liberia and any impact of the TRC on the environment of evil is lessened if people are not even aware of it.

In Mozambique, without any effort at truth telling or a TRC, there was no ability to change the environment of evil. According to Graybill (2004) both sides in the conflict were afraid that truth telling would result in inquiries into their own abuses and chose to be silent on the abuses rather than speak about them publicly (1125). As a result, both parties involved in the war remain in power in Mozambique and although people may be aware of the abuses of the party in control, *FRELIMO*, there has been no movement to oust them from power. Would a TRC have changed this power balance in Mozambique? It's hard to say, but the failure to talk about the offenses during the war certainly makes it more difficult to change.

Final Thoughts and Future Research

It appears that at least among states that have had conflicts TRCs can provide benefits in efforts to improve democracy and the rule of law and that those benefits exceed the benefits amnesties can provide. The case studies of Liberia and Mozambique show that both states have benefited from efforts to democratize and improve rule of law since their civil wars ended, but both still have substantial challenges facing them. The failure of both states to grapple with the abuses that occurred their wars other than by offering an amnesty or a TRC that made recommendations that could be or would not be followed has led to two states that have made improvements but appear to be unable to make further changes at this time. Liberia continues to have inequality between the Americo-Liberians and the indigenous population, the same inequality that led to the two civil wars. Mozambique continues to have conflicts between the two political parties and those in power seem unable or unwilling to address that conflict.

There are several avenues for future research in this area. Several authors, including Gibson (2004) suggest that procedural fairness of TRCs, including whether they hold public hearings, issue public reports and disseminate those reports need to be considered when looking at the effect of TRCs. Judging from the experience of Liberia having these due process procedures may not be enough to promote democracy and rule of law. A measure of whether recommendations are followed through on by the state may be an additional factor to measure effectiveness because the recommendations are the way the TRC can bring about change.

Olsen, Payne, and Reiter (2010) briefly considered regional differences in TRCs and Roht-Arriaza and Gibson (1998) have also suggested that regions may make a difference, as may whether the TRC was conducted before or after the South African TRC. The effect of regional differences is a critical issue for future research because not all states need the same type of TRC. TRCs in African states may need different procedures and objectives to be effective from TRCs in a western state.

There are also a variety of questions regarding the nature of the conflict that might be useful to determining the effectiveness of a TRC. While the intensity of the conflict was included in this study, there are other relevant questions such as: were atrocities committed on one or on both sides? Is there a generally accepted answer to the question of which side's forces were the worst offenders? Did the worst offenders win or lose the war (or was it a stalemate)? Did the worst offenders win or lose the first post-war election, and by how much? Do the offenders maintain a latent capacity to deploy coercion, force, and/or violence? Were the atrocities committed by isolated gangs of marauding thugs, or by forces authentically representing substantial communities that perceived themselves to have a stake in the conflict's outcome? Because the nature of the conflict in terms of intensity was seen to be significant these other questions may also be significant in determining the relationship of a TRC to democracy and rule of law.

Lastly, on the question of differences between TRCs before and since 1994, it would be interesting to conduct a study limited to TRCs conducted since 1994. Many of the early TRCs had poor procedures and were more of a subterfuge for authoritarian regimes to justify their rule than true truth seeking efforts. This is particularly true of TRCs like the first one in Uganda in 1974 but there are other examples as well.

If states continue to pay the non-economic and economic costs for a TRC and rely on them for justice, and if international organizations continue to support and encourage states to use TRCs, it is important that these questions be answered.

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ABSTRACT**TRUTH AND RECONCILIATION COMMISSIONS: THE ROAD TO DEMOCRACY AND RULE OF LAW?**

by

JULIE A. KEIL**May 2014****Advisor:** Dr. Sharon Lean**Major:** Political Science**Degree:** Doctor of Philosophy

Every year millions of dollars are spent on Truth and Reconciliation Commissions (TRC) designed to bring about post-conflict resolutions in states through a formal process. This paper explores the major TRCs comparatively to assess the relationship between TRCs and the growth of democracy and rule of law in post conflict societies and compares that performance to a control group of states that experienced a conflict but did not conduct a TRC. Seventy-seven TRCs have been conducted or were seriously proposed since 1971. All TRCs assert as part of their charter that their goals include the growth of democratic ideals and rule of law. There has been little quantitative study of this relationship and qualitative studies focus primarily on single state case studies rather than looking comparatively. This dissertation hypothesizes that there is a relationship between conducting a TRC and the growth of democracy and rule of law in post-conflict states. In order to test this hypothesis, data from the forty one TRCs conducted and concluded between 1981 and 2010 was analyzed, as well as data from post-conflict states where a TRC was not conducted. Polity IV data regarding democracy and CIRI data regarding the rule of law was utilized to determine changes in democracy and the rule of law. A case study was also concluded of Liberia, a state which conducted a TRC and Mozambique, a state which did not but did issue a general amnesty to look at the issues of democracy and rule of law most intensively. This paper concludes that post conflict states conducting TRCs have a greater improvement in

democracy and rule of law than states that did not utilize a TRC and the relationship is significant statistically. The relationship is less when the conflict was an intense conflict involving more than one thousand battle deaths and is improved when an amnesty is given along with the TRC. The relationship provides a small portion of the explanation for change in democracy but when coupled with democracy scores provides almost one half of the explanation of change in rule of law but is also lower if the conflict has been intense in terms of battle deaths. Lastly, it concludes that the experience in Liberia with their TRC is too recent to show a relationship but that Mozambique, which utilized only an amnesty, is starting to experience deterioration in the levels of democracy and rule of law.

AUTOBIOGRAPHICAL STATEMENT**JULIE A. KEIL**

Julie Keil received her B.A. in history from the University of Michigan in 1975. Although her degree was in history she chose classes that would equip her to succeed in law school, including challenging courses in constitutional history. While in college she worked with local community theaters to hone her skills in public speaking and presentation with an eye toward attending law school and becoming a trial attorney. In 1976 she moved to Eugene, Oregon and attended the University of Oregon law school, graduating in 1979 with an emphasis on criminal and family law. She worked for the Public Defender's Office in her last year of law school, representing indigent clients in court while still in law school. In July of 1979 she passed the Oregon bar exam and in July of 1980 she passed the Michigan bar exam.

After graduating from law school she worked for three years for Legal Services of Eastern Michigan, a national organization providing free legal services to the poor. She specialized in the legal needs of the elderly and worked on numerous pamphlets and seminars on elder law and represented clients in a three county region for their legal needs. In 1982 she opened her own law office, and with a partner provided low cost legal services to clients in Midland and Bay counties in Michigan until 1995. In 1995 she took a job as the corporate counsel for a real estate corporation and focused primarily on an environmental case that was eventually heard by the United States Supreme Court.

In 2001 she decided to return to college for her Masters of Arts in history at Central Michigan University, graduating in 2005 with an M.A., specializing in Modern European History. Along the way she took a few political science classes and discovered an interest in political science. After completing the requirements towards a Master's degree in political science she transferred to Wayne State University's PhD program.

While working towards her PhD. she has worked full time as a lecturer at Saginaw Valley State University, teaching political science and managing the moot court program for undergraduate students. She traveled to Liberia with the African Democracy Project through Wayne State University and acted as an election observer for the 2011 elections, providing her with an opportunity to conduct field research in Liberia.