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Racial Reckoning in the United States: Expanding and Innovating on the Global Transitional Justice Experience

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Summary

The United States is in a profound moment of public reckoning with its history of racial injustice. In the time since George Floyd's murder, national and local initiatives seeking truth, redress, and reform (TRR) for historical racial injustices have multiplied across the country. These efforts include national proposals for a truth, racial healing, and transformation commission and a reparations commission, as well as dozens of subnational initiatives on reparations, truth, and reform. Diverse in form, these efforts are united in their goal of seeking remedies for state-sanctioned racial violence and discrimination.

This emergent TRR movement is drawing deeply from the field of transitional justice. Transitional justice is a global practice designed to help countries reconcile with a history of past human rights abuses. While it is traditionally used in countries transitioning from conflict and authoritarianism, U.S. stakeholders are adapting its tools—like truth commissions, reparations, and institutional reforms—as well as its lessons for local purposes. This working paper investigates the transitional justice approaches and lessons most relevant for the United States' TRR community in the present moment through three case studies: Brazil, South Africa, and Northern Ireland. Together, these case studies surface a number of lessons, relevant for both practitioners and donors, on initiating and sustaining TRR initiatives appropriate for the U.S. context.

The case study of Brazil reveals the importance of confronting the legacies of amnesty and the ways in which amnesty can license collective forgetting about the brutality and impacts of past harms. The study also demonstrates the tremendous contributions that subnational truth commissions make in generating rich, new findings that complicate a larger narrative,

as well as in developing locally relevant recommendations. In failing to fully capitalize on subnational contributions, the case of Brazil also demonstrates the importance of coordinating subnational and national TRR efforts and in leveraging a national commission to integrate and amplify local findings.

South Africa provides a powerful example of how a truth commission can be a vessel for reshaping public memory and national identity, using nationally televised public hearings, emotional victim testimony, and respected national leaders to engage the population. However, South Africa's case also shows the limits of a process that focused predominantly on individual human rights violations and invested less in investigating both the structural factors that enabled those abuses and the socioeconomic dimensions of harm. With the proper mandate, resources, and protocols, institutional hearings can be a critical tool for truth commissions to engage in analysis of structural harms.

Finally, the case study of Northern Ireland demonstrates the potential limits of truth telling and the importance of focusing on reforms that remedy the relationship between the state and the citizens that have been harmed by its actions and policies. Northern Ireland's Independent Commission on Policing pioneered a new approach to policing based on community partnership, human rights, and accountability that has led to measurable change in public opinion toward the police. Further, Northern Ireland's success in addressing socioeconomic drivers of conflict can be traced to its affirmative approach to mainstreaming the goal of economic equality into its governance systems.

Together, these cases reveal important ways that the United States can learn from and innovate on the global practice of transitional justice as it seeks to capture the opportunity of this moment.

Introduction

A new and expanded demand for truth, redress, and reform (TRR) in the United States exploded in 2020, fueled by the murder of George Floyd and the unprecedented social movement for racial justice it unleashed. There are currently twelve existing or proposed subnational truth commissions across the United States, including in states like California, Iowa, Maryland, and Pennsylvania.¹ Since 2020, at least seven states have created task forces or other bodies to investigate the impacts of systemic racism and recommend reforms.² Several cities, including Amherst, Massachusetts; St. Paul, Minnesota; and Athens, Georgia, have created commissions or other mechanisms to study reparations.³ Meanwhile, the city of Evanston, Illinois, broke new ground when its city council voted to initiate the first-of-its-kind reparations scheme, which will distribute money to eligible households impacted by the city's historic redlining policies.⁴ National-level efforts have grown as well, with a new legislative proposal on truth, racial healing, and transformation introduced in Congress in late 2020.⁵ This bill complements H.R. 40's long-standing proposal to establish the Commission to Study and Develop Reparation Proposals for African Americans.⁶ A bill to establish the Truth and Healing Commission on Indian Boarding School Policy has also been proposed.⁷

This is not the first time the United States has acted on a need to acknowledge and redress past human rights abuses against U.S. nationals on the basis of their race or ethnic origin. Following internment and other harms committed against Japanese Americans during World War II, the United States established the Commission on Wartime Relocation and Internment of Civilians and paid modest financial reparations to victims.⁸ During the same period, the U.S. Congress also established the Indian Claims Commission to respond to Native American claims of historic land dispossession.⁹ The results were ultimately

disappointing: most of the allocated payments were inaccessible to the recipients and instead put in trusts held by the U.S. government. These and other missteps demonstrate the difficulty that the United States has always had in reckoning with ugly parts of a history at odds

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with its professed ideals. Nowhere is this more glaring than in the nation's failure to address both the enduring legacies of a society built on a race-based social hierarchy and the tools of repression used over decades to support this hierarchy.

The United States is not the first or only country to grapple with questions of accountability and redress for state-sanctioned wrongs against its own citizens.¹⁰ It is, however, one of only a few established democracies to do so, especially

vis-à-vis events of a distant past.¹¹ Nevertheless, the United States can draw from a rich body of international experience that is also relevant to its unique circumstances. The field known as transitional justice deals broadly with helping countries confront legacies of past human rights abuses. Acknowledging the impossibility of replicating the experiences of famous cases like South Africa or Argentina, the United States can nevertheless build on global experiences in ways that help to expand and innovate on what other countries have done.

This paper seeks to explore the potential of transitional justice approaches in the U.S. context. It does so first by briefly describing the tools and approaches of the transitional justice field and examining the unmet need for racial reckoning that these approaches may help to fill. Second, it examines three case studies to draw discrete lessons that speak directly to the dynamics of TRR in the United States. Finally, it offers some recommendations to the TRR community in the United States on how best to leverage these tools to meet the unique conditions of the present moment.

What Is Transitional Justice?

Transitional justice is a well-established field of tools and approaches designed to help countries reconcile with a history of past human rights abuses.¹² It originated in the aftermath of World War II, when the international trials in Nuremberg and Tokyo helped establish an international framework for universal human rights norms. The field truly blossomed in the 1980s and 1990s when the Cold War ended and a wave of countries in Latin America and Eastern Europe began to transition away from repressive dictatorships to more open and democratic systems of governance.¹³

These transitions from dictatorship to democracy posed dilemmas. On one hand, human rights activists and victims wanted to hold perpetrators accountable for the unconscionable abuses committed in the name of the state, abuses that were committed to maintain the

existing power structure at all costs. However, in early cases such as Chile and Argentina, the transition to democracy depended on existing governments relinquishing their hold on power and allowing democratic, civilian leadership to take control. But members of the previous regimes often maintained major sources of power within society, within the government, and even within the military. For example, in Chile, ex-dictator Augusto Pinochet continued to serve as the commander of the military after the democratic transition.¹⁴ In this and other cases, prosecuting former rulers for human rights abuses would endanger the democratic transition, ensuring the resurgence of bad actors if the costs of the transition became too high.¹⁵

How then to secure a new political order that would not only protect human rights but also do justice to the loss of life and livelihoods and the trauma endured by the population under the previous government? These dilemmas led to the development of new mechanisms to respond to a newly defined set of needs: for accountability, for a public airing of the scope and scale of abuses at both societal and individual levels, for developing remedies for those who were victimized, and for the legal and institutional protections to make sure that such abuses could never happen again. Transitional justice emerged out of a recognition that there must be a way of reckoning honestly with the past that did not foreclose a more stable and democratic future, where victims and perpetrators could coexist. It acknowledges the inadequacy of complete reliance on traditional criminal justice tools in helping to bring societies together after collective trauma.¹⁶ In offering a set of approaches designed to help countries grapple with the inherent tensions between peace and justice, transitional justice can be a useful framework for the United States as it struggles with questions of collective responsibility for the racial injustices of the past and present.

What Does Transitional Justice Look Like in Practice?

Transitional justice employs a wide range of approaches.¹⁷ Some, such as criminal prosecutions, are widely employed in a variety of contexts and understood to be the highest form of accountability, particularly with respect to crimes committed by the state. Other nonjudicial approaches have been created out of whole cloth by the unique set of needs presented by the transitional justice dilemma, such as the truth commission.¹⁸ Over time, the set of approaches deployed under the banner of transitional justice coalesced around four main goals: accountability, truth seeking, repair and redress, and ensuring that abuses do not recur.¹⁹ Global experience suggests that these mechanisms are best deployed in a holistic approach, rather than as individual tools.²⁰

Accountability. Accountability is most often pursued through criminal prosecutions, where individual perpetrators can be tied to specific human rights violations. Prosecutions pursue justice for victims while also serving as a deterrent for future abuses by signaling to society that new norms now govern state-society relations. Trials and prosecutions are also believed to have a truth-telling function in that they establish facts about specific abuses and assign harm to specific actors.²¹

But in providing a verdict only based on individual actions, trials rarely provide judgment on broader systemic policies or cultures of repression. Nor is prosecuting all perpetrators possible in cases where violence was widespread. Instead, some countries pursue selective prosecutions of higher-ranking officials.²² The question of whether and to what extent to pursue prosecution inevitably provides an opening for the alternative of amnesty, or freedom from prosecution. Amnesty is often justified either to achieve reconciliation more quickly or because of the impracticality of mass prosecutions.²³

Truth Seeking. Truth seeking aims to uncover, establish, and publicize the truth about a country's history of abuses, as well as personal experiences and consequences of this abuse. Truth commissions are the most prominent mechanism for truth telling. They are temporary bodies mandated to investigate patterns of gross human rights violations committed over a period of time in the past, usually through victim testimony that reveals previous hidden or unknown facts.²⁴ Truth commissions are based on the assumption that a just, equal society cannot be built on a historical lie, as historical lies and conflicting narratives about history can justify and generate violence, conflict, and structural inequalities.²⁵ They are most often commissioned by governments, but can also be unofficial, created and administered by civil society organizations—like Guatemala's Recovery of Historical Memory project (REMHI), which was clandestinely run by the Catholic Church.²⁶

In addition to truth commissions, there are many other potential truth-seeking measures, including commissions of inquiry, which typically investigate singular events; memorialization efforts; oral histories; judicial truth-seeking efforts; forensic truth-seeking initiatives like exhumations and identification of victims; and the declassification and publication of archives.²⁷

Repair and Redress. Transitional justice also seeks to repair and redress harms inflicted on victims and their families, most often through reparations. There is no adequate way to repair certain harms, particularly the loss of life, family, or livelihood. But reparations can allow for perpetrators to acknowledge harm and begin the process of resetting the relationship between victims and perpetrators.²⁸

Reparations can take many forms, both symbolic and material. In Chile, where military rule victimized different categories of people, reparations have included a variety of material reparations such as monthly pension benefits for the families of victims of human rights violations and physical and mental health services for victims, their families, and their descendants.²⁹ Other reparations schemes have included one-time payments or the restoration of property rights over land.³⁰ Symbolic reparations consist of actions taken to address the moral harms of abuses committed against both individual victims and society as a whole. Symbolic reparations include apologies and memorialization initiatives such as museums, memorials, sites of memory, and commemorative activities and holidays.³¹ Memorialization efforts help to preserve the history of past wrongs, educate future generations, and ensure these wrongs remain part of a society's collective memory.³² In addition to responding to individual harms, reparations can also seek to remedy structural inequalities for larger groups of victims.³³

Reform and Nonrecurrence. Reforming abusive institutions is an important pillar of the transitional justice response and integral to ensuring nonrecurrence of abuses. Reform often helps to advance other transitional justice goals such as redressing past wrongs and fostering reconciliation.³⁴ Reform might take place in a variety of institutions and sectors, depending on the specifics of how those sectors helped to perpetuate or maintain a culture of harm. For example, security sector reform is often a major focus of transitional justice agendas and includes efforts to restructure militaries, police forces, and the relationships between the security sector, the civilian government, and citizens.³⁵

Countries have also used constitutional and legal reform to change the structure of the state and government, creating more independent judiciaries and adding human rights and minority protections to the constitutional order.³⁶ Lastly, educational reform and the creation of educational programs are also significant, though overlooked, aspects of post-transitional justice efforts.³⁷

The Case for a Transitional Justice Approach in the United States

The United States has already drawn from the transitional justice field to create its own truth-seeking and reform efforts.³⁸ Among the most well-known of these efforts are the Greensboro Truth and Reconciliation Commission, a civil society–led effort focused on the 1979 killing of African American civil rights organizers, and the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, which examined the forced removal of Native American children from their homes.³⁹ However, the United States has actually had as many as six truth commissions, if large investigatory efforts such as the 1898 Wilmington Race Riot Commission and the 1967 National Advisory Commission on Civil Disorders (also known as the Kerner Commission) are included.⁴⁰ The Kerner Commission was established in the wake of racial unrest in several cities in 1967 and, much like a truth commission, held public hearings and conducted witness and victim interviews. In its 440-page final report, the Kerner Commission firmly identified structural racism and inequality as the cause of the riots and made detailed policy recommendations designed to improve the socioeconomic conditions of African Americans.⁴¹ Many of these inequalities remain today.

However, the current demands for justice are fundamentally different from past moments of racial reckoning for two reasons. First, these demands reflect buy-in from a larger cross-section of American society than in the past. The collective and near-universal witnessing of the video of the 2020 murder of Floyd by a police officer drove millions of Americans across political, racial, geographic, and demographic lines into the streets.⁴² Unlike past moments of unrest, this collective action became a tipping point in calls for a wholesale reckoning with

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Local activists and organizations in disparate locations around the country have been pressing for reform and are now finding more sympathetic government officials who are willing to initiate these efforts. This proliferation of local efforts provides tremendous opportunity for both experimentation and innovation in TRR practices in the U.S. context, as well as the opportunity to share new approaches with the transitional justice field.

But will the United States finally succeed in achieving its racial reckoning? Today's demands are rooted in the transitional dilemmas of the past and in the trade-offs made then in the name of peace and progress. Yet, these past failures at genuine reckoning perpetuate modern injustices and are echoed in today's demands. Illustratively, this paper will briefly examine two past U.S. transitional moments: first, sectional reconciliation after the Civil War and the abolition of slavery and second, the democratization of the U.S. South in the post-Jim Crow era. These two periods are not meant to exclude other historical periods or individual events that may warrant a transitional justice approach, but they provide examples of the missed opportunities to address the structural harms that persist today and in which some of today's modern demands for justice are located.

Sectional Reconciliation: Trade-Offs in Healing a Divided Nation

The Civil War transformed the United States. It ended the horrific practice of slavery, freeing 4 million African Americans from a system that subjected them to forced labor, physical and sexual violence, family separation, cultural assimilation, and wealth deprivation. The war also decimated a prosperous economic market powered by slaves valued in 1860 at \$3.5 billion dollars (over \$115 billion dollars today), making slaves the largest financial asset in the United States prior to the war's onset.⁴⁴ And it fundamentally reconfigured the political, social, and economic relationships between Black and White Americans in ways previously unfathomable. In the process, it also took the lives of at least 750,000 soldiers plus 50,000 noncombatants and wounded over 1 million.⁴⁵

At the end of the Civil War, the U.S. government faced a crucial transitional dilemma: the government needed to coax an aggrieved South into accepting a postwar settlement that would put formerly enslaved individuals and White Southerners on equal footing as U.S. citizens. Two solutions emerged. First, president Andrew Johnson granted nearly universal amnesty to former Confederate soldiers, which pardoned most rebels of the crime of secession and allowed them relatively painless reintegration into the United States. Second, a

systems of racial injustice in the United States, including policing and extending to housing, infrastructure, lending, and education.⁴³

The second unique factor is that the emerging demand for TRR bubbled up organically from the subnational level.

military occupation of the South by federal forces enforced the new political and economic order, in which formerly enslaved people could now exercise the rights of citizenship, including the rights to vote and to run for office.⁴⁶

The twelve-year period known as Reconstruction was a radical reimagining of American democracy which, if sustained, could have made tremendous progress in normalizing the participation of African Americans in American social and political life.⁴⁷ During this period, 2,000 African Americans were elected to public office, the vast majority of whom served in local and county positions. Black voter registration reached nearly 90 percent, with almost 1 million newly enfranchised Black citizens voting throughout the South within three years of the end of the Civil War.⁴⁸ Reconstruction also laid the foundation of a vibrant Black civil society—including schools, colleges, and churches—that would later become sites of resistance.⁴⁹

But Reconstruction produced fierce backlash. Many White Southerners vehemently and violently resisted even the partial dismantling of the antebellum racial and economic hierarchy. The questions of accountability for secession and justice for formerly enslaved people were never on the table, but still many White Southerners continued to contest the question of enforcing the full realization of emancipation. Beginning in 1873, a series of court decisions began to limit the scope of the Thirteenth, Fourteenth, and Fifteenth Amendments, which had granted former slaves citizenship status and suffrage rights.⁵⁰ Meanwhile, Northern calls for sectional reconciliation had already begun, and Reconstruction soon became politically inconvenient.⁵¹ When a contested election in 1876 threatened the Republicans' hold on the presidency, they entered into a grand bargain to secure Southern Democrat support for their preferred candidate, president Rutherford B. Hayes. In exchange, Republicans secured the withdrawal of the remaining federal troops from the South and ended federal enforcement of the laws protecting the rights of Black citizens in the South.⁵²

The Compromise of 1877, as this exchange is known, officially ended the government's efforts to build a democratic society based on racial equality. Even before the compromise, the South had already begun to rewrite the narrative of the war itself.⁵³ Southern writers, such as Edward Pollard, propagated the narrative of the "lost cause," which positioned the war as a just struggle for states' rights rather than a conflict over the status of slavery. Reframing the war in this more positive light helped to lay the foundation for reconciliation with Northern sympathizers ready to forgive and forget.⁵⁴ The initial postwar amnesty, followed by the rewriting of Civil War history through lost cause propaganda, prevented a reckoning with the treasonous nature of secession and with slavery itself. In abandoning Reconstruction, the government further abdicated its responsibilities to its new citizens. As historian David Blight has noted, the nation's reunion after its deadly civil war "could not have been achieved without the re-subjugation of many of those people whom the war had freed from centuries of bondage."⁵⁵ The reconciliation and future stability of the nation was the overwhelming priority, and questions of justice and redress for Black Americans and accountability for the actions of the Confederacy were buried in service of that broader goal.⁵⁶

The Push for Democracy in the Jim Crow South

The closing of the democratic opening fostered by Reconstruction in the American South was quickly followed by efforts to reinstate a system of racial hierarchy. Southern Democratic elites quickly shut Republicans out of power and engineered single party control in order to strip Black Americans of their de facto political status and to ensure that status could not be reinstated. To do this, White Southern Democrats deployed approaches well-documented in authoritarian systems of governance to limit political competition while maintaining the veneer of democratic process.⁵⁷

Voter and candidate intimidation. Networks of armed white supremacists committed violence against both Black and White Republican voters, candidates, and officeholders. This helped to ensure Democratic takeovers of nine governorships and three-quarters of the region's congressional seats, consolidating one party rule.⁵⁸

Unfair playing field. In order to reduce the risk of open political competition, White Southern Democrats manipulated the state apparatus to force through legal and constitutional reforms that would produce restrictions on suffrage that impacted Black and many White people as well, despite the fact that many states at the time were comprised of large Black populations. Voting restrictions took many forms, including cumulative poll taxes with multiyear fees, literacy tests, property qualifications, criminal disqualifications, grandfather clauses, and white primaries.⁵⁹ Turnout among Black voters plummeted, while non-Democrat opposition parties lost a large swath of their voter base. In addition to preventing Black people from voting, white primaries also ensured that Black voters were precluded from membership in the Democratic Party and from contesting for public office as candidates.⁶⁰ As a result, many elections in the South went uncontested by Republicans.

Violent overthrows of democratically elected governments. In 1898, a group of White members of the Democratic Party, which included former Confederate officers, violently overthrew the city of Wilmington, North Carolina's Republican-led government, leading to dozens of deaths and the displacement of hundreds as the violence continued.⁶¹ The 1898 Wilmington Race Riot Commission called the event a "coup d'état."⁶² A similar, earlier attempt at violent overthrow of a Republican government took place in New Orleans, Louisiana, in 1877 and led to open conflict in the French Quarter, reversed only by the intervention of federal forces.⁶³

Violence and coercion. Coercion took many forms, including imprisonment, destruction of property, torture, murder, lynching, and state execution.⁶⁴ From 1877 to 1950, white supremacists committed over 4,000 known racial terror lynchings in twelve Southern states.⁶⁵ The lynchings were intended to enforce social controls on Black Americans as well as to maintain the hierarchy of a white supremacist society.⁶⁶ This was accomplished both by the act of lynching itself and the use of lynchings as public spectacles designed to intimidate entire communities of African Americans. Later, lynchings were used in a more limited way to punish Black people who were advocating for civil and political rights.⁶⁷

Some scholars have described Jim Crow–era Southern states as “authoritarian enclaves,” pockets of authoritarian governance that exist within a nationally democratic country.⁶⁸ These and other tactics used to perpetuate these enclaves, notably the Jim Crow system that maintained racial segregation, lasted for nearly 100 years until they began to crack under the pressure brought on by a combination of litigation, civic action, and mass protest during the civil rights movement.

The civil rights movement used tactics and demanded remedies that were legal and enforceable, including legal challenges to existing laws and pressure for the adoption of new laws, such as the Civil Rights and Voting Rights Acts. Through showcasing the inhumanity of Jim Crow and its defenders, the movement also facilitated shifts in public opinion to pressure local and federal authorities to enforce the new legal order.⁶⁹ The movement’s successes unleashed a wave of symbolic and substantive changes. These included the dismantling of institutionalized segregation in education and public spaces, improvements in professional and clerical hiring practices, and improved political representation.⁷⁰ Most notably, the civil rights movement restored the political and civil rights stripped from African Americans living in southern enclaves. Yet, despite its successes, the civil rights movement fell short of its ambitions. It did not succeed in unseating the entrenched social and economic inequalities that helped to maintain a racial hierarchy, which allowed for informal segregation in education and housing to continue.⁷¹ It also fell short of achieving a deeper societal reckoning with the underlying reasons that reform was needed, namely, the continued existence of systemic racism across many facets of American life.

These two periods in American history were major transitional moments where opportunities to acknowledge and remedy historical wrongs could have emerged. However, neither led to a victory over the enduring legacy of white supremacy nor to a public reckoning with the violence and human rights abuses enacted in its service. These failures are made plain in Floyd’s brutal murder and in the dozens of recent police-involved shootings of Black Americans, in the enduring economic inequality afflicting African Americans compared to other segments of American society, and more broadly in the terrible toll of the coronavirus pandemic on minority communities, particularly African Americans and Native Americans.⁷² No longer transitioning politically from war to peace or from subnational authoritarianism to democracy, the United States nevertheless finds itself perpetually trapped in a transitional dilemma: if the country fully reckons with its history, can its people live with the remedies?

What Can the United States Learn From Global Experiences of Transitional Justice?

There is no doubt that TRR in the United States needs to look very different from transitional justice processes that have occurred in any other country. In other countries, transitional justice is largely implemented at the national level, often with international support.⁷³ Given that the United States is a large, federal system with a bias toward locally driven initiatives, TRR will undoubtedly mirror this orientation and center on a bottom-up

approach to reform, perhaps eventually triggering a nationally led effort. The United States is also many generations beyond these past transitional moments, making some of the more traditional transitional justice approaches, such as truth seeking and prosecutions, more difficult to implement.

This paper acknowledges the uniqueness of the U.S. case and highlights several key variables for analyzing comparative transitional justice experiences in a way that gleans the most applicable lessons for the United States. These variables include the highly localized, subnational nature of U.S. TRR efforts; the significant delay in deploying TRR well after a transitional moment; and the desire of TRR activists in the country to focus more on socioeconomic and structural harms than on individual ones.

This paper focuses on three country case studies that offer unique insights into each of these characteristics: Brazil, South Africa, and Northern Ireland. Like the United States, Brazil is a large, diverse, federally run system, and its highly subnational transitional justice approach provides useful insights for the United States. South Africa in particular is often used as a reference point for U.S. aspirations, yet there is just as much to learn from the shortcomings of the South African case as from its successes, which this paper seeks to explore. Finally, Northern Ireland demonstrates the successes of embracing socioeconomic reforms and the trade-offs that may be needed to achieve them.

Brazil

Like its Latin American neighbors, Brazil transitioned out of a violent military dictatorship, but its delayed transitional justice experience and failure to achieve deep accountability has resulted in the country being largely overlooked as a teachable case. However, as a large, federal, multiracial democracy dealing with distant abuses, Brazil pioneered a vibrantly subnational approach to transitional justice that, although not wholly successfully, holds lessons for how reparations and truth can be innovatively pursued in the similarly decentralized and diverse U.S. context.

Background

On March 31, 1964, members of the Brazilian Armed Forces seized power from democratically elected president João Goulart, beginning twenty-one years of military dictatorship. The coup followed Goulart's introduction of structural economic reforms, which were aimed at addressing years of citizen demands for greater access to education, land reform, and lower inflation.⁷⁴ These reforms fed into the escalation of domestic Cold War political dynamics in Brazil, in which conservative sectors of Brazilian society, including the military, turned on its so-called inner enemies to protect the country from communist influences. To legitimize

its rule, the armed forces relied on strong economic performance and an anticommunist ideology, using violence and repression against anyone deemed subversive to these two central interests.⁷⁵ Military rule was initially welcomed by large sectors of Brazilian society, particularly the Catholic middle class, as a temporary measure to restore social order.⁷⁶

The regime wrapped its subversion of democracy in a shroud of legalism, issuing seventeen institutional acts to gradually consolidate control over political institutions.⁷⁷ The first institutional act purged 10,000 civil servants from government jobs; suspended the political rights of 378 individuals, including three former presidents; and established indirect elections to Congress.⁷⁸ The period from 1968 to 1973, termed the “Years of Lead,” were the most violent, and the military’s use of torture and other forms of persecution became more systematic.⁷⁹ In 1968, the military passed the infamous Institutional Act Number Five, which suspended constitutional rights, including habeas corpus; the National Congress; and state legislative assemblies. Organized resistance to the regime was ineffective: young, urban, left-wing guerrillas used spectacular tactics, like kidnappings of foreign diplomats and bombings, to pressure the regime but were easily suppressed, while rural insurgents were small in number and failed to initiate a broader uprising. The regime systematically infiltrated and dismantled these groups, often torturing and killing members.⁸⁰

By official government counts, the regime killed or disappeared 434 people.⁸¹ It subjected 45,000 to political persecution; at least 20,000 people were tortured and tens of thousands were purged from their positions.⁸² These official numbers underestimate the scale of violence: reliable evidence exists that the regime was responsible for the deaths of at least 8,000 Indigenous people, and one scholar estimates that by the 1970s, around 500,000 people had suffered some form of politically motivated human rights violation.⁸³ Many more abuses are uncounted because the armed forces have destroyed or hidden important documents.⁸⁴

By 1973 the military’s power had begun to weaken.⁸⁵ The global oil crisis contributed to worsening economic conditions, which on top of the regime’s political repression helped to build broader opposition to military rule. The regime recognized that initiating a democratic transition from a position of relative strength would benefit its position later and allow it to dictate the terms of the transition.⁸⁶ When a popular movement erupted in 1978 calling for a general amnesty for political prisoners, the military—though initially resistant—eventually seized the opportunity to orchestrate a comprehensive amnesty that would protect its members from prosecution under a new government.⁸⁷ It continued a highly controlled transition to civilian leadership through the gradual reintroduction of elections beginning in 1985 and a new constitution in 1988.⁸⁸

But where the military wanted to close the book with amnesty, other segments of Brazilian society clamored for a greater reckoning—for truth, for accountability, and for reparations. These demands emerged in a piecemeal fashion over several decades, resulting in an uneven and incomplete transitional justice approach. The fact that transitional justice did emerge, however, demonstrates that a minimal level of reckoning with the abuses of the military era would ultimately be required to fully transition to democracy.

Repair in the Absence of Justice

Transitional justice in Brazil proceeded in three main phases over the course of more than thirty years. These phases included an amnesty phase; a victim recovery and reparations phase; and, finally, a truth-telling phase. An amnesty law enacted in 1979 was a defining element of each phase, with all subsequent transitional justice efforts emerging in response to this first consequential decision.

Brazil's 1979 Amnesty Law initially emerged in response to citizen mobilization to demand that they would not be prosecuted for any alleged political crimes against the regime. The military regime, weakened toward the end of its rule, capitulated on amnesty for political dissidents, but insisted it be applied bilaterally. Under these terms, members of the military regime who had committed human rights violations would also be granted prosecutorial relief.⁸⁹ In the critical transition moment before further democratic reforms, the 1979 Amnesty Law protected the military from criminal accountability, vetting, and major reform, giving it a way to comfortably cede power. However and perhaps more importantly, the law also institutionalized a culture of national forgetting about the impact of the dictatorship's abuses, which the military diligently censored and hid and which would now be shielded from public scrutiny.⁹⁰

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But the law also created a backlash by those most closely impacted by the regime's violence and who deeply objected to the lack of accountability, especially under forthcoming democratic rule. Even during preparation for the required amnesty proceedings, a group of lawyers secretly copied and smuggled over a million pages of military court transcripts out of Brazil from 1979 to 1982 in order to

prevent their likely destruction once amnesty proceedings were complete.⁹¹ The pages were eventually published as the best-selling *Brasil: Nunca Mais* (Brazil: Never Again) report, documenting the persecution of over 7,000 civilians in military courts and over 1,800 torture sessions that occurred between 1964 and 1979.⁹² Kept secret for years as the negotiated transition unfolded, its 1985 publication coincided with the reintroduction of indirect elections and Brazil's nominal return to democracy.⁹³ *Brasil: Nunca Mais* was the first authoritative account of the dictatorship's abuses and a repudiation to the moral argument that amnesty and impunity should prevail in a democratic Brazil.⁹⁴

However, with the authority of the new government so tenuous and with amnesty on the books, there was no appetite by the new political leadership to take action on the basis of *Brasil: Nunca Mais*. Government decisionmakers knew that an aggressive posture toward the military might invite its intervention into political life again.⁹⁵ Soon, however, a new phase of transitional justice emerged in Brazil, this time focused squarely on victims. Victim

demands for compensation had been an undercurrent throughout the early years of democratic rule, but the discovery of clandestine mass graves in São Paulo in 1990 and Rio de Janeiro in 1991 revived the urgency of the issue among the broader public.⁹⁶ Authorities in both localities established investigatory commissions, prompting the federal government to follow with its own hearings with relatives of dead victims, victims of torture, and military officials. Through a combination of further advocacy, court petitions, and international pressure, the government eventually established two national reparations commissions: the 1995 Special Commission on Political Deaths and Disappearances (CEMDP) and the 2001 Amnesty Commission.⁹⁷

The CEMDP provided financial reparations as well as symbolic reparations, such as pardons, to a narrow category of victims, specifically those that had been killed by the state due to their political activities.⁹⁸ It issued reparations to 280 victims, or 75 percent of petitions.⁹⁹ The Amnesty Commission addressed harm inflicted on Brazilians who had suffered other forms of persecution under the regime, such as torture, loss of employment, illegal surveillance, and the stripping of rank for civil servants.¹⁰⁰ By 2018, it recognized 45,000 people as victims of persecution.¹⁰¹

The Amnesty Commission in particular played an important role in pushing against the culture of forgetting. It operated as an archive and a reparations agency, but even more importantly, it served as a mini truth and memory commission. Beginning in 2008, the commission traveled around the country, often to the site of abuses, to publicly listen to reparations applications (which were provided either through one-time payments or permanent monthly installments) and to issue public apologies.¹⁰² This initiative, dubbed the amnesty caravan, would hold discussions, sometimes screening films and holding art exhibitions, followed by administrative sessions to adjudicate amnesty applications.¹⁰³ As of June 2014, eighty-six amnesty caravans had taken place in twenty states, with 1,804 amnesty requests and 16,000 total participants.¹⁰⁴ By 2010, the government had paid out approximately \$2 billion in reparations, making it one of the most generous reparations programs in the world.¹⁰⁵

The Struggle for Collective Memory

It seems in some ways inevitable that amnesty followed by a massive victim reparations effort would be unsustainable without some degree of truth telling. Alongside new memory initiatives, the Amnesty Commission began to publicly question the legitimacy of the 1979 Amnesty Law for shielding perpetrators of human rights violations.¹⁰⁶ Buoyed by the Amnesty Commission's activism and the increasing support of the leftist government of former president Luiz Inácio Lula da Silva—which included members who had themselves been persecuted by the military regime—victims and human rights groups continued to challenge the Amnesty Law. In 2010, these efforts succeeded in winning an Inter-American Court of Human Rights case, which struck down the 1979 Amnesty Law on the grounds that amnesty cannot cover human rights violations. The court recommended a truth

commission to investigate these violations.¹⁰⁷ One year later, Brazil's new president Dilma Rousseff signed the National Truth Commission (NTC) into law.¹⁰⁸

Brazil's NTC was established more than twenty-five years after the end of the military dictatorship, a culmination of the multiple truth-seeking and reparative initiatives that took place over the preceding decades. The NTC was mandated to investigate human rights abuses committed in the context of political conflict from 1946 to 1988, but the commissioners deliberately chose to focus only on abuses committed by the military regime during the years 1964 to 1988.¹⁰⁹ The NTC had more investigatory power than either of the previous reparations commissions, including the power to request classified documents, convene witnesses and testimonies, ask for witness protection, name individuals and institutions responsible for human rights violations, and make recommendations.¹¹⁰ However, the commission ultimately failed to deeply penetrate Brazil's collective memory about the negative impacts of the military regime. After successive waves of corruption scandals, the military's influence in Brazilian politics today is growing once again, fanned by the election of former army captain and military sympathizer Jair Bolsonaro to the presidency in 2018.¹¹¹

Several factors contributed to the limited public impact of the NTC. First, the NTC added little new information to the dominant understanding of military rule. It primarily conducted historical research, compiling information from existing archives, and only secondarily relied on witness testimony.¹¹² It also did not seek out new avenues of inquiry, a decision underpinned by the military's lack of cooperation in providing documents.¹¹³ Second, the NTC did not foster public engagement with its activities. It gathered witness and victim testimony privately rather than holding many public hearings. The small number of hearings it did convene, around eighty,¹¹⁴ were often in combination with subnational commissions.¹¹⁵ The NTC's final report was also difficult to read and access, and it did not include an executive summary for easy public consumption.¹¹⁶

The NTC also failed to adequately expand the dominant narrative or to elevate new voices and information. Despite the emergence of over 140 subnational truth-telling efforts coinciding with its own work, the NTC did little to leverage new information from subnational investigations to shape the nation's broader understanding of the military era.¹¹⁷ In part, this was due to internal disagreements within the NTC, but some of it was due to poor coordination and mismatched mandate timelines between the national and subnational bodies.¹¹⁸ Furthermore, rich new findings from the subnational commissions were relegated to the NTC's second volume, where findings that were not officially endorsed by the commission were collected. This was a crucial, missed opportunity to expand the average Brazilian's awareness of the military's impact on many aspects of Brazilian life, including its impact on marginalized groups like rural and Indigenous communities. As a result, the emerging narrative remained narrowly focused on left-wing political activists as the primary targets of the regime.¹¹⁹ Ultimately, even the highly supportive left-wing government did not take up the NTC's report recommendations or socialize its findings more broadly.¹²⁰

A Bright Spot: Brazilian “Commissionism”

Despite the shortcomings of the NTC, Brazil’s truth-seeking journey nevertheless holds important insights for the United States, particularly on truth seeking at the local level. Within six months of the creation of the NTC, subnational truth commissions blossomed all over the country, a phenomenon described as “commissionism.”¹²¹ Some were formal government entities, created by state governments and city councils, while others were nonstate efforts organized by universities, bar associations, unions, and civil society organizations. For many of these commissions, the main goal was to investigate localized human rights violations from the military era, often in hopes of supporting the work of the NTC by providing a much more detailed picture of the impact of military rule across Brazil’s twenty-six states. Some commissions anticipated that the National Truth Commission would not succeed and formed to fill this predicted void.¹²²

In total, about 140 subnational truth commissions came into existence after 2011, including at least twenty-eight municipal commissions and fourteen state commissions.¹²³ The subnational commissions collaborated with each other as well as with the NTC at a scale not seen before in other truth commissions. The NTC signed collaborative agreements with forty-three subnational commissions that allowed it to share archival documents, conduct joint investigations, and jointly collect new testimony.¹²⁴ Subnational commissions strove, in many cases successfully, to have their findings incorporated into the NTC’s final report.¹²⁵

The first subnational Brazilian truth commission was established in the state of São Paulo by the state’s Legislative Assembly.¹²⁶ In addition to its ten commissioners selected from representatives of the Legislative Assembly, the São Paulo State Truth Commission also included an advisory council of forty-five representatives of civil society groups and government institutions who monitored its activities, ensured transparency, and provided independent advice.¹²⁷ Its primary mandate was to investigate human rights violations and other acts of political persecution committed by the military in the state of São Paulo. The commission made wide use of public hearings to collect witness and victim testimonies—941 testimonies in total—and broadcast them live on YouTube and local television.¹²⁸

Subnational truth commissions expanded the definition of victims of the dictatorship beyond the most prominent urban student activists and opposition figures. For example, municipal commissions established in São Paulo examined the persecution of factory workers who participated in strikes and were subsequently blacklisted from other employment.¹²⁹ The Rio de Janeiro State Truth Commission estimated that 140,000 people, primarily poor Black residents of favelas, were systematically displaced from their homes between 1962 and 1974.¹³⁰ Local commissions also expanded the geography of the military’s activities into previously unseen settings. The Bahia State Truth Commission, created by decree on International Human Rights Day, investigated human rights violations committed by Bahaiian public officials, and quantified the number of victims in the state.¹³¹ The Paraíba State Truth and Memory Preservation Commission investigated violence against peasants.¹³² The Amazonas State Truth Commission investigated violations against Indigenous populations, including killing raids.¹³³

Subnational truth commissions put forward rich, new findings that complicated the dominant narrative that military violence was largely limited to urban areas and to elite political dissidents. They revealed the degree to which rural, poor, and marginalized communities were also highly impacted, a conclusion that provides insight into enduring patterns of violence in Brazil, particularly in favelas.¹³⁴ They championed local remedies: memorialization, revised school curriculum, and recommendations for criminal justice reform.¹³⁵ These are important lessons for the United States to best leverage the comparative strengths of localized TRR mechanisms. But because most subnational commissions finished their work after the NTC had concluded, many subnational investigations were not included in the final NTC report. Ultimately, the lack of coordination between the national process and subnational inputs, the commission's failure to endorse said inputs, and the lack of a public airing of the new information all led to a missed opportunity to combat the legacy of amnesty and impunity in Brazil.

Lessons for the United States

Amnesty creates inertia that works against truth telling, an inertia that can be difficult to overcome. The 1979 Amnesty Law was formative in shaping Brazil's relationship with the injustices rife during its years of military dictatorship, creating a burden on victims to justify demands for truth telling. This burden was only overcome after decades had passed and after undeniable evidence such as mass graves came to light.

The United States' relationship with its profound legacy of racial injustice is also deeply shaped by the amnesty of the Civil War, as well as by the war on memory waged by the architects of the lost cause narrative. This caused not only a national forgetting as in the case of Brazil but also the construction of a false narrative used to justify the reimposition of the world order that existed prior to the war. It will be critical for the modern-day truth and racial healing movement in the United States to recognize that these moments of national forgetting must be vigorously overcome if truth telling is to help fundamentally reshape the United States' relationship to the harms inflicted in its past.

It is critical that national truth initiatives have the tools and mandate to officially acknowledge past harms. In light of the challenge created by amnesty and the choice to forget, Brazil's NTC should have been given a public platform that would have allowed for mass engagement, including through televised or live-streamed hearings. Without mass public engagement, the commission's activities—largely conducted with archival documents and behind closed doors—represent a significant failure to build a case for a true reckoning with the injustices committed during military rule.

In any effort to establish a national truth commission, the United States must also recognize that the primary contribution is unlikely to be new, previously unknown information, but instead a high-profile and public airing of that information under the auspices of a U.S. government-sanctioned process.

Subnational truth-telling and reparations mechanisms can help to provide a more textured understanding of the past and surface locally driven remedies and reforms.

Subnational truth commissions became an important innovation in Brazilian transitional justice. They helped to democratize the truth-seeking processes and deepen the country's understanding of the military's impact by engaging stakeholders and institutions from around the country.

With numerous truth-telling efforts underway, the United States is already well on its way to leveraging the advantages of subnational truth commissions.¹³⁶ The United States could further replicate Brazil's experience by enhancing cooperation and information sharing across these subnational efforts, helping to leverage resources and build greater public awareness of their activities. Similarly, a critical lesson for the United States is the need to better sync national and local truth commission mandates and timelines in ways that ensure a more comprehensive final report. They also need planned mechanisms for resolving disputes that will inevitably arise.

South Africa

For deeply divided societies, South Africa's peaceful transition from apartheid to democracy is an enduring model. South Africa's innovative Truth and Reconciliation Commission (TRC) helped build an inclusive national narrative and social cohesion after decades of racialized political violence. However, South Africa has been less successful in remedying the enduring socioeconomic inequalities caused by apartheid. In tracing out how the TRC failed to provide a complete account of the apartheid system of political and socioeconomic hierarchies, lessons arise for how a truth commission might be designed to deal with violence with enduring legacies that are socioeconomic, as is the case with historical racial inequity in the United States.

Background

Apartheid emerged out of South Africa's colonial past as a system designed to protect the political and economic power of the descendants of White colonists. After Great Britain seized the colony from the Netherlands in 1803, British settlers vied for control over the territory with the descendants of Dutch settlers, known as Afrikaners. This competition, intensified by the discovery of gold and diamonds, culminated in two devastating wars in 1880 and 1899 and ultimately in victory for the British.¹³⁷ These British settlers built a tense peace with the Afrikaners in a newly unified South Africa by passing laws to entrench the economic and political power of the minority White community (who made up less than 20 percent of the population).¹³⁸ World War II upset this settlement. The war effort accelerated

urbanization and economic growth, bringing Black Africans into cities. The British ruling party temporarily relaxed segregationist laws. Responding to White settlers' fears of integration and the opportunity to unseat the ruling party, the Afrikaner National Party (NP) came to power in 1948 promising to create a more comprehensive, homegrown system of racial separation called apartheid.¹³⁹

Over the next four decades, the NP built apartheid by passing a web of interlocking laws that legislated racial separation and inequality into all aspects of life.¹⁴⁰ South Africa was governed through White minority rule; non-White people could not serve in Parliament and were unable to vote.¹⁴¹ Economically, Black people were barred from all but low-wage, low-skill positions; could not form unions; and served as a cheap labor pool for the economy, which was led by White people.¹⁴² The NP outlawed interracial public facilities and marriages and created a separate education system for Black individuals designed to provide only the skills needed for physical labor.¹⁴³ Non-White people had to use passes to travel to White areas, where they could not legally live.¹⁴⁴

Black liberation organizations, foremost among them the African National Congress (ANC), mobilized to oppose this oppressive reality. However, rather than accept non-White South Africans as fellow citizens, the government only intensified its pursuit of total racial separation by creating "homelands." These were impoverished Black tribal areas, governed by political administrations created by the NP and established on the meager 13 percent of land designated for Black ownership.¹⁴⁵ The NP hoped to make Black individuals citizens of these homelands rather than of the South African state, while still using them as a cheap migrant labor source. Between 1955 and 1985, the government forcibly relocated approximately 3.5 million Black South Africans to these homelands, and from 1970 onward, it stripped 9 million of their South African citizenship.¹⁴⁶ These policies collectively produced profound and enduring racial inequality.¹⁴⁷

Maintaining apartheid required high levels of repression. Using anti-communism as its justification, the government outlawed all forms of dissent, banned liberation parties, and empowered the police and security apparatus with broad discretionary powers, making torture and basic rights violations routine.¹⁴⁸ The 1960 Sharpeville Massacre, in which police killed sixty-nine anti-apartheid protesters, moved Black resistance groups to take up arms against the state.¹⁴⁹ By the 1980s, the country was mired in political violence, with Black conservative and liberation groups now also fighting each other and committing human rights violations. In total, 25,000 people were killed from 1960 to 1994, with 14,000 of these between 1990 and 1994.¹⁵⁰

As a defiantly oppressive system, apartheid invited the intense scrutiny that led to its downfall in the 1980s. Aided by international boycotts and sanctions, the domestic anti-apartheid movement crippled the economy and rendered the country ungovernable through mass protests, boycotts, and strikes.¹⁵¹ Depleted of legitimacy and unable to defeat its armed opponents, the NP split and began losing Afrikaner voters.¹⁵² Upon assuming the presidency in 1990, F.W. de Klerk surprised the nation by lifting the ban on liberation parties and

releasing Nelson Mandela, the leader of the African National Congress (ANC), from prison. Thereafter, the NP began serious bilateral negotiations with the ANC that morphed into multilateral negotiations with a variety of political parties and organizations and ended in South Africa's first democratic election in April 1994.¹⁵³

Apartheid left South Africa urgently in need of a dual transformation: a political transformation to democracy and a socioeconomic transformation to social and economic equality between racial groups. During the transition's negotiation period from 1990 to 1994, political violence skyrocketed and South Africa, suffering from years of international divestments and sanctions, fell into an economic recession. Against this backdrop, the NP and ANC fiercely contested the parameters of reforming the nation. Both sides knew that transition was inevitable and that the ANC, as the country's foremost liberation movement, would likely win the first democratic elections. Each side also had key interests to secure and constituencies to protect.¹⁵⁴ The ANC envisioned that South Africa would be ruled by the Black majority, would redistribute resources more equitably, and would prosecute apartheid agents for their crimes.¹⁵⁵ However, while it maintained its hold on power, the NP strove to prolong the transition until it could guarantee amnesty for apartheid-era crimes and protections for White South Africans, including protection against state-led redistribution of the wealth and land concentrated in White hands.¹⁵⁶ Otherwise, White South Africans could flee the country, taking with them precisely the funds and resources needed for economic recovery.¹⁵⁷ Already during negotiations, the NP privatized industries in anticipation of a Black socialist government.¹⁵⁸ Meanwhile, the ANC faced a dilemma between pursuing its long-stated goals of transformation, which the Black majority had come to expect, and the reality that such a vision could trigger white flight, economic collapse, and possibly civil war.

Apartheid left South Africa urgently in need of a dual transformation: a political transformation to democracy and a socioeconomic transformation to social and economic equality between racial groups.

The ANC ultimately moderated its vision, and the resulting approach to transitional justice elevated reconciliation and national unity as its primary goals—an agenda that would be achieved through a holistic and inclusive array of symbolic initiatives and substantive reforms.¹⁵⁹ Foremost among them was the 1996 constitution, widely considered one of the most progressive in the world, which politically transitioned the country from White minority rule to a parliamentary democracy. Crafted with broad civil society consultation, the constitution enshrined fundamental rights to housing, education, water, social security, food, and healthcare.¹⁶⁰ To address the socioeconomic legacy of apartheid, the ANC proposed its 1994 Reconstruction and Development Programme (RDP), which commits the government to meeting basic needs, to education and land reform, to a national public works program, and to affirmative action.¹⁶¹

How Can Truth Lead to Transformation?

Emerging from decades of systemic racism and injustice, both South African society and its government were enormously preoccupied with the work of transitioning. By far the most iconic element in South Africa's intensive transitional justice approach is its TRC. Created in 1994 and run from 1996 to 2003, it had three main tasks. First, it investigated gross human rights violations that occurred between 1960 and 1994 through its Human Rights Violations Committee. To avoid victor's justice, it investigated both pro- and anti-apartheid actors, including the ANC. Second, the TRC's Reparation and Rehabilitation Committee recommended a reparations policy to address the needs of victims. Last, the Amnesty Committee granted amnesty to perpetrators of politically motivated human rights abuses who fully disclosed their crimes at a public hearing.¹⁶² The TRC helped South Africans of all backgrounds peacefully confront their violent past. In doing so, it weaved a new, inclusive national narrative based on respect for human rights, reconciliation, and truth.¹⁶³

The success of South Africa's Truth and Reconciliation Commission stems from how it elevated individual human rights abuses suffered by victims of the apartheid regime. Unlike truth commissions in other countries, which worked mostly behind closed doors, the TRC was highly publicized by the government and international community and headed by eminent leaders like Nobel Peace Prize winner Desmond Tutu. Of the 22,000 witness statements gathered by the Human Rights Violations Committee, which attest to over 33,000 human rights violations, 2,000 victims were carefully hand-picked from various backgrounds to testify at emotional public hearings that were also broadcast on primetime television.¹⁶⁴ In tandem, the Amnesty Committee exposed perpetrators: 1,973 individuals out of 7,000 total applicants disclosed their crimes in public hearings.¹⁶⁵ Although members of the apartheid security forces were less likely to apply, the testimony of key figures like notorious police colonel Eugene de Kock gripped the nation.¹⁶⁶ By 2000, only 11 percent of Africans, 12 percent of White settlers, and 9 percent of Indians knew little or nothing about the TRC.¹⁶⁷

Through these hearings, the TRC broadly socialized an official account of the political violence that had plagued South Africa since 1960, narrowing the gaps in historical memory that existed between different racial groups, particularly Black and White groups.¹⁶⁸ Importantly, by condemning human rights violations on all sides, the TRC narrated South Africa's political transition to a new democratic reality where perpetrators and victims could coexist and where recourse to violence would not be tolerated.

However, this premium on racial reconciliation obscured the fundamental dilemma still confronting the country: that interracial coexistence in a new, inclusive, and economically viable South Africa may have come at the cost of economic justice and wealth redistribution.¹⁶⁹ The TRC embodied the tensions in these political and economic goals, specifically in its prioritization of investigating individual human rights violations over structural and economic harms.

To begin, the commission was given a flexible mandate—to investigate both human rights abuses and the context, factors, and motivations that allowed these abuses to occur. But it chose to prioritize the former. From the beginning, the amnesty and human rights violations committees had clearly elaborated protocols, like an amnesty application and a process to record violations.¹⁷⁰ In contrast, the commissioners decided, out of fear of overburdening the commission, not to create a committee or process to systematically investigate major policies—like forced removals, the creation of homelands, and the pass laws—that impacted millions of South Africans.¹⁷¹ Furthermore, commissioners structured the TRC so that individual investigations would occur first while structural investigations, carried out through questioning political parties and institutional hearings, would begin halfway through the commission's work. However, by 1998, investigations into individual violations were nowhere near complete. Consequently, the TRC did not switch to prioritizing structural analysis as planned.¹⁷²

The three main committees were unequipped to make up for these shortcomings. By design, the amnesty procedure could only consider physical rights violations, like torture, which meant it excluded socioeconomic rights violations altogether and instead mostly investigated security agents. Similarly, the Reparation and Rehabilitation Committee condemned the business community for its complicity in sustaining apartheid but did not investigate in depth, nor did it quantify the economic consequences of major apartheid policies and the business community's complicity in them.¹⁷³ Even if the committees had tools that could be leveraged for structural analysis, they were too overburdened with their primary tasks to take full advantage of them. For example, amnesty commissioners didn't utilize the criteria of full disclosure to force perpetrators to recount their career histories, deeper motivations, or other contextual information that could shed light on the racist goals of apartheid.¹⁷⁴

The TRC did have one promising tool dedicated to structural analysis: its institutional hearings. The institutional hearings adapted the public hearings model to investigate the complicity of six sectors in building and sustaining apartheid: the media, business and labor, prisons, the faith community, the legal system, and the health sector. Held over two to three days, each public hearing elicited an average of eighty to 100 submissions from victims, nongovernmental organizations, and institutional representatives who then publicly testified, either to provide evidence or to defend themselves from accusations.¹⁷⁵

However, these hearings fell short of their potential to shine a light on the broader dimensions of the apartheid system due to a lack of resources and clear objectives. Were they meant to systematically document abuses, determine responsibility, or serve as a platform for discussion? Commissioners weren't sure. When faced with the rare chance to publicly question institutional leaders, commissioners asked improvised and uncoordinated questions. The hearings lacked a mechanism like amnesty to force organizations to fully disclose their involvement in apartheid. Furthermore, hearings were rushed; in some cases, watchdog organizations with compelling evidence of human rights abuses had less than fifteen minutes to testify. Unlike the victim and amnesty hearings, only a meager 150 people attended each hearing.¹⁷⁶

As a result of the marginalization of structural analysis, the TRC's final report represents apartheid as a system that primarily enacted violence through its repressive security apparatus rather than equally through socioeconomic policies that plunged millions of Black South Africans into generational cycles of poverty, dispossession, and deprivation. Other than one single chapter offering brief historical context, neither the racist ideology underpinning the apartheid system nor the system's socioeconomic dimensions are credited explicitly as factors contributing to human rights abuses.¹⁷⁷ The TRC's work missed its opportunity to articulate a narrative for the socioeconomic transformation promised in the RDP and the constitution.

The Unfulfilled Promise of Democracy

The TRC's successes and failures serve as a microcosm for South Africa's overall experience with using transitional justice to advance social transformation. On one hand, South Africa succeeded in crafting a carefully inclusive new vision through the TRC and the constitution, one that has lessened conflict over national identity. Surveys since 1995 show that the majority of South Africans feel pride in their new national identity and national symbols, particularly the constitution, and citizen support for reconciliation remains high.¹⁷⁸ White South Africans haven't fled the country en masse, and South Africa avoided a devastating civil war. When civil society protests the government, it does so from a strong commitment to democracy and the constitution, to which it often refers.¹⁷⁹

However, the socioeconomic legacies of apartheid persist and threaten to undermine these political gains. The ANC's initial desire to moderate its vision to avoid economic collapse has warped into pursuing economic development at the expense of redress. Emblematic of this is the Growth, Employment and Distribution (GEAR) plan, which replaced the RDP in 1996. GEAR was meant to decrease inequality while slashing government spending. In reality, it compounded apartheid-era inequalities and commercialized basic services, like water and electricity.¹⁸⁰ From 1995 to 2005, unemployment and income inequality in South Africa increased, with the racial gap persisting.¹⁸¹ Although much is made of a growing Black middle and upper class, it is tiny.¹⁸² Structurally, the economy remains bifurcated, with White individuals concentrated among top earners and dominant in a small number of high-wage jobs and millions of Black South Africans in poverty under low-wage work, unemployment, or informal work.¹⁸³

Land reform and memorialization have been commercialized, with economic development, not redress, as their primary goals.¹⁸⁴ Furthermore, the ANC only reluctantly issued reparations for TRC victims in 2003 at a fraction of the amount promised while admonishing them for not being satisfied with truth alone.¹⁸⁵ Citizens have grown disillusioned with the democracy they strove so hard to create: Afrobarometer surveys since 2011 show that support for democracy has declined, with a majority of citizens willing to give up elections for a government that could provide basic services like water and housing.¹⁸⁶ Notwithstanding the powerful example of its political transition out of apartheid, South Africa's inability to address structural economic inequality had deeply tainted the promise of its transition to a truly inclusive society.¹⁸⁷

Lessons for the United States

Truth commissions can be powerful tools for reshaping public memory and national identity. The TRC was successful because it took its role as a temporary symbolic process seriously. To inaugurate a new South African reality, it used heightened rhetoric, public hearings broadcast on television, the emotional testimony of victims, and the visibility of respected leaders to popularize its message and engage a broad swath of South Africans. The combined result of these efforts is not only a narrative of a violent, horrific past but a narrative of how South Africans have persisted through extreme violence to transition to something better.

In the United States, with its contested narratives of the history and legacies of slavery and Native American dispossession, a similarly engaging truth commission could be a powerful opportunity to foster greater ownership over the darker parts of the American story, as well as the ways in which generations of Americans have fought to overcome them.

To adequately address structural factors that enable human rights abuses, truth commissions must adequately mandate, resource, structure, and staff themselves to investigate laws and social policies, as well as complicit sectors of society. The lesson of the TRC is that structural analysis must be clearly elaborated in the commission's mandate, properly resourced with clear protocols to avoid being marginalized, and creatively designed so it can engage the public rather than occurring behind the closed doors of investigators and historians. Because it did not prioritize structural analysis, South Africa's TRC missed its rare opportunity to condemn apartheid completely and weave this condemnation into South Africa's new national narrative.

Similarly, a truth commission in the United States cannot primarily rely on individual testimony to investigate historical, structural harms such as slavery, Native American dispossession, or redlining. Although South Africa's institutional hearings ultimately fell short, if properly resourced, they are a useful model for how to conduct structural analysis in an effective, publicly engaging way.

Transformation requires more than truth. South Africa's experience with truth telling demonstrates that while truth may be necessary for social transformation, it is insufficient to achieve it. The South African government failed to follow the TRC with prompt reparations or policies to address the socioeconomic dimensions of apartheid. Today, inequality persists while the reconciliation and social cohesion built by the TRC have eroded. Recently, violence and looting sparked by the arrest of former president Jacob Zuma erupted along racial lines throughout South Africa. In Phoenix, South Africa, this fighting occurred between Black and Indian communities, killing thirty-six people.¹⁸⁸ The grievances of lasting inequality persist between these communities, and this time there is no TRC to come in and heal the divide. Moreover, a truth commission may further raise expectations about reforms to address structural inequities. Without the follow-through to meet those expectations, a truth commission's legitimacy, along with the narrative and national identity that it can uniquely create, will also decline. Likewise in the United States, truth in itself will be insufficient and must instead be a pathway toward designing policies and reforms that address long-standing structural harms.

Northern Ireland

After thirty years of conflict and innumerable deaths, disappearances, and human rights abuses in Northern Ireland, Catholic and Protestant communities finally found a tenuous peace through an internationally mediated peace process. The peace has held in part due to a comprehensive mix of economic and security reforms meant to reduce inequality and the political marginalization of the Catholic population. These reforms were achieved in the absence of real truth and reconciliation. Nevertheless, they have served as a pathway toward peace and a more inclusive democracy, and they can provide insights for U.S. stakeholders that speak to the practical dilemmas of pursuing TRR in a context of entrenched division and polarization.

Background

Northern Ireland's thirty-year-long civil conflict, known as the Troubles, can be traced to the conquest of Catholic Ireland by Great Britain and the resettlement of Irish land in the sixteenth and seventeenth centuries by Protestant British and Scottish settlers.¹⁸⁹ An Irish home rule campaign for regional autonomy escalated tensions between the two communities in the late nineteenth century. In 1920, the United Kingdom responded by partitioning the island, leaving the Republic of Ireland with a Catholic majority and a small Protestant minority and cultivating Northern Ireland as a Protestant-dominated territory of the United Kingdom.¹⁹⁰

Even from the earliest days, Catholic and Protestant communities were largely separate: they attended segregated schools, lived in segregated housing, marched in different parades, and celebrated different holidays.¹⁹¹ After partition, Catholic people in Northern Ireland, now suddenly a minority group, confronted heightened inequity. Gerrymandering frequently left them underrepresented in elected positions. Emergency laws restricted their political and civil rights while discrimination in housing, public appointments, and employment perpetuated economic depression in the Catholic community.¹⁹² By the 1960s, a predominantly Catholic civil rights movement, which was influenced by the civil rights movement in the United States, emerged to respond to these conditions. The British government did not address the movement's demands, and the Protestant-dominated police, the Royal Ulster Constabulary (RUC), worked alongside loyalist citizen groups to suppress the movement, often with violence.¹⁹³ Political conflict escalated, with several high-profile protests overtaken by violence and riots. The British government in 1969 deployed military troops and in 1972 dissolved Northern Ireland's devolved legislative assembly, replacing it with direct rule by Westminster for the next twenty-six years.¹⁹⁴

Rooted in the political and economic grievances formalized by the partition, the Troubles evolved into a low-level but highly violent conflict between the British state, Catholic Republicans, and Protestant Loyalists. Not purely a religious or identity conflict, the

Troubles were animated by the question of Northern Ireland's constitutional status as a function of many Catholics' desire for equal political and economic rights. In the absence of those rights, Republicans made it their goal to achieve Northern Ireland's reunification with Ireland, while Loyalists strove to ensure Northern Ireland remained in the UK. Republican paramilitaries defended Catholic areas and conducted guerrilla campaigns against the state. Loyalist paramilitaries defended loyalist areas and sought to combat Republicanism, purportedly in defense of the state. Both sides engaged in assassinations, kidnappings, bombings, shootings, and retaliation killings, and both created alternative justice systems in their communities to sanction political and nonpolitical infractions through public humiliation, exile, punishment beatings, and execution.¹⁹⁵ In combating paramilitaries, British security forces—including the British army and the Protestant-dominated RUC—used emergency measures and torture, imprisoned without trial, killed civilians, and colluded with loyalist paramilitaries.¹⁹⁶ The conflict killed over 3,500 people and injured over 47,000 more, touching the lives of nearly all citizens of Northern Ireland.¹⁹⁷

Is Truth-Telling Necessary to Build a New Society?

Peace in Northern Ireland was ultimately achieved through an internationally mediated peace process. Once secret negotiations between the British government and paramilitaries finally yielded a ceasefire, the Belfast Agreement was signed on April 10, 1998, by the British and Irish governments and eight of Northern Ireland's political parties.¹⁹⁸ The Belfast Agreement established a constitutional framework for devolved governance, power sharing, and new human rights and equality commissions designed to address the grievances that helped drive the conflict. The central tenet of the agreement was its "principle of consent," which stipulated that Northern Ireland's status could only change if a majority of the populations of both Northern Ireland and the Republic of Ireland supported it.¹⁹⁹

Two dimensions of the Belfast Agreement constrained the prospect of truth telling in Northern Ireland.²⁰⁰ First, the agreement laid to rest the question of the Northern Ireland's constitutional status, a question which lay at the heart of the conflict. Reopening this most contentious question in a truth-telling process could have risked unravelling the agreement and destabilizing the peace. Second, the agreement utilized a fault-neutral approach, which refrained from ascribing blame or responsibility to either side of the conflict.²⁰¹ Though each side expressed interest in seeking truth and accountability for victims, neither side could overcome its fundamental lack of trust in the opposing side's willingness to publicly admit its responsibility for human rights abuses during the conflict.²⁰² A comprehensive truth-telling process, particularly one centered on the experiences of victims at the hands of individual or institutional perpetrators, would upend the fragility of a peace that relied on this official narrative of fault neutrality. As a result, neither truth telling, accountability, nor reparations played a major role in Northern Ireland's transition away from violence.

The mixed results of Northern Ireland's limited truth-seeking processes reinforce the question of what truths are necessary to uncover and for what purpose. The British government,

under public pressure in the aftermath of the peace agreement, deemed it necessary to reopen an investigation into the events of Bloody Sunday, a 1972 massacre in which British soldiers killed thirteen Catholic civilians during a protest.²⁰³ Lasting twelve years, consisting of twelve volumes, and noted for its independence and thoroughness, this investigation ultimately concluded that the British military was responsible for the civilian deaths and exonerated the Catholic victims who were falsely accused of being armed in a previous investigation into the incident.²⁰⁴

The Bloody Sunday Inquiry was arguably the most successful effort to elevate the experiences of Catholic nationalist victims, who were normally put lower on the hierarchy of communities harmed in the conflict.²⁰⁵ However, the resulting Saville Report did not recommend any prosecutions; only a limited number of prosecutions have taken place regarding any human rights violations committed during the Troubles.²⁰⁶

Other truth efforts were less successful. In 2005, a police-led truth-seeking effort began under the auspices of the Police Service of Northern Ireland with the goal of reexamining over 3,000 unsolved deaths during the Troubles period.²⁰⁷ One of the most comprehensive, official truth-seeking processes in the post-Belfast Agreement era, it also lacked independence, conducted improper investigations of cases that involved the British state, and was eventually disbanded in 2014.²⁰⁸

If the government was not eager for a formal truth process, neither was the public of Northern Ireland. A 2011 survey found Catholic and Protestant victims and the general public were ambiguous about formal truth mechanisms while being highly supportive of community-level mechanisms.²⁰⁹ Both sides feared the other side would benefit most from a truth-telling process, at the expense of their own ability to control the narrative of the conflict.²¹⁰ In the absence of consensus around a national truth commission, truth telling in Northern Ireland emerged primarily as a bottom-up process, organized by victims' groups and civil society through the collection of oral histories, storytelling, and community memoirs. As one example, the Ardoyne Commemoration Project, a completely community-run oral history project, captured the stories of the ninety-nine people from Ardoyne, mostly Catholics, who were killed during the Troubles.²¹¹ In the Catholic nationalist community, these truth-telling efforts are not primarily aimed at external stakeholders but are instead aimed at preserving community truths on community terms.²¹²

However, these memory wars and the lack of a comprehensive narrative of the Troubles have not impeded meaningful progress on other dimensions of the peacebuilding project that have improved the security and socioeconomic conditions underlying Catholic grievances. Indeed, the notable progress in policing and in addressing economic inequality has occurred largely in the absence of a broader collective processing of the conflict on both sides. This demonstrates that truth-telling processes should be shaped by the objectives they seek to achieve, which can sometimes be narrow in scope and small in scale.

A Transformative Reform Agenda

Repairing socioeconomic wounds. Northern Ireland’s targeted focus on the social and economic drivers of division are highly relevant for the U.S. context. The Belfast Agreement articulated a transformation of economic and social relations that were necessary to address the roots of the conflict and bring peace to Northern Ireland, including provisions for economic development, measures to address social cohesion in a divided society, and actions to address economic inequality between the two communities.²¹³ In this way, the agreement not only addressed grievances that were rooted in violations of human rights but also those emerging from socioeconomic harms.

This agenda centered on one major principle: equality of opportunity. Equality was a more advanced articulation of a series of policy measures that emerged during the 1970s and 1980s to address the socioeconomic conditions underlying the Troubles, including policies addressing antidiscrimination and fair treatment in public and private employment.²¹⁴ In going beyond mere antidiscrimination, the equality principle demonstrated the inadequacies of policies that narrowly focused on preventing negative discriminatory practices rather than working positively to promote equality across the segments of society in Northern Ireland.²¹⁵

Three main mechanisms helped to facilitate the implementation of the equality principle. First, the Northern Ireland Act of 1998, which implemented the Belfast Agreement, placed a statutory duty on all public institutions to promote equality of opportunity between all people regardless of “religious belief, political opinion, racial group, age, marital status, or sexual orientation.”²¹⁶ Second, the legislation also required all public authorities to create equality plans in consultation with members of civil society. Public authorities were required to monitor the impacts of their plans and release these results to the public.²¹⁷ Finally, the Equality Commission, a new institution created by the Belfast Agreement that subsumed the mandates of preexisting bodies focused on antidiscrimination, was charged with the review and oversight of the equality plans and with investigating complaints.²¹⁸

Mainstreaming antidiscrimination and equality into the governance of Northern Ireland has significantly contributed to improved economic equality between Catholic and Protestant communities. In 1971, Catholic men were more than twice as likely to be unemployed compared to their Protestant counterparts.²¹⁹ By 2012, unemployment had declined for both groups, and the differential between the two had been cut in half.²²⁰ Catholics are also more proportionally represented in managerial and professional positions than they were prior to the Troubles.²²¹ However, there have been shortfalls in other areas of social policy, notably in decreasing segregation in education and housing, including public housing. Integrated education has been shown to promote positive inter-group relations, yet as in the United States, the education system in Northern Ireland remains significantly segregated due to public reliance on religious education.²²²

Nevertheless, Northern Ireland’s success in advancing equality is undoubtedly rooted in the central role that bridging socioeconomic divides played in the Belfast Agreement. This

success was not predicated on truth recovery or on a public reckoning around the causes of conflict. Northern Ireland already had extensive antidiscrimination measures, many created in response to the Troubles, and it was widely accepted by political leaders on both sides that socioeconomic inequality was a key driver of the conflict. Rather, it was the enormous political opportunity created by the peace process that changed the incentives around enacting a more transformative approach to reducing inequality.²²³

Partnering in policing. Given the direct involvement of the RUC in the conflict, policing reform was also an essential component of improving the state-society relationship in Northern Ireland.²²⁴ The architects of the Belfast Agreement recognized this, but the sensitivity of police reform drove negotiators to address it indirectly through a post hoc policing commission. In kicking the can on this issue, negotiators likely helped to stabilize the fragile peace agreement, but they also ensured that policing reform would become the next focal point for contestation.²²⁵

The Independent Commission on Policing, better known as the Patten Commission after its chairman, conducted a comprehensive and highly consultative review of policing in Northern Ireland. It carried out public opinion surveys, focus groups, interviews, large public meetings, and gathered written input.²²⁶ Participants described the commission's public meetings as similar to a truth commission environment, in which victims and perpetrators sat together and heard testimony on human rights abuses. However, like the Belfast Agreement itself, the commission carefully positioned itself not to be an arbiter of truth, a mechanism for investigating the past, or an instrument of assigning blame for abuses.²²⁷ Instead, it used this range of input to design a forward-looking reform agenda grounded in human rights principles that would help to ensure the police never again engaged in activity that violated these rights.²²⁸

The Patten Report, as the commission's recommendations came to be known, directly addressed the need to forge new relationships between Catholic communities and the institutions most responsible for harm to those communities.²²⁹ To this end, the Patten Report recommended both symbolic and substantive changes. The symbolic changes involved changing the name of the police from the RUC to the Police Service of Northern Ireland and replacing imagery such as flags and emblems that associated the police with either Great Britain or with Ireland with neutral imagery. More than other commission recommendations, these symbolic changes were fiercely contested by Protestant Unionists and members of the police alike. They struck at the heart of the debate around national identity, membership, and belonging, around which the conflict between unionists and nationalists had turned.²³⁰

The substantive changes proposed by the commission focused on fundamentally transforming the relationship between the police and the community. The commission proposed an approach to policing that would be collaborative in nature, based on a common vision of public safety, and devolved to local levels.²³¹ It also focused on oversight and accountability for poor policing practices, including its poor performance on human rights. The report addressed accountability in three ways: first, through a new policing board to include

elected and nonelected members to monitor police performance; second, through a Police Ombudsman to investigate complaints; and finally, through the creation of an Oversight Commissioner to supervise police implementation of the Patten Report's recommendations. The report also made recommendations to ensure that a new and transformed police service would be more representative of Catholics than in the past. In its recommendation to conduct "policing with the community," the Patten Commission recognized that policing, and public safety more broadly, was not just a job for the police but involved partnerships with a variety of community partners and stakeholders. This reimagining of public safety, including but not exclusive to police, finds echoes in U.S. policing debates today.

The substantive changes proposed by the commission focused on fundamentally transforming the relationship between the police and the community.

The Patten recommendations have led to meaningful changes to policing practices in Northern Ireland and to the experience of everyday citizens in their interactions with the police. Public opinion surveys since the implementation of Patten's recommendations showed that overall public confidence in policing as of 2019 was at 81 percent, and 83 percent of adults in Northern Ireland were confident that police treat Catholics and Protestants the same, a notable improvement from the time of the conflict.²³² Accountability institutions like the ombudsman also had high public support and legitimacy, with overwhelming majorities believing their complaint would be handled fairly.²³³ New recruitment procedures yielded significant improvements in the hiring of Catholic and women police officers.²³⁴ And by 2006, the oversight commissioner reported that 129 of the Patten Report's 175 recommendations had been implemented.²³⁵

However, Northern Ireland also demonstrates that the "how" matters as much as the "what." Patten's recommendations almost never saw daylight, which serves to caution the United States. Following the release of its report, the commission did not take on the role of selling its recommendations to the public or to political parties who would have to turn them into legislation, many of whom instead quickly mobilized in opposition.²³⁶ Some have argued that the Patten Report also failed to offer a justification for its recommendations in ways that could help explain their necessity, one that would inevitably have to be rooted in an examination of past police abuses against Northern Irish citizens.²³⁷ Aogán Mulcahy writes,

The failure to examine the past—or even explain the differing interpretations of the same [past]—may, in large part, have been at the root of continued institutional resistance within government and the police, and of 'foot dragging' by unionists. With no justifications offered for the need for radical change, it is hardly surprising that many wondered why it was at all necessary.²³⁸

In the end, it took nearly a decade from the time the Patten Report was published to see its recommendations implemented in ways that yielded a meaningful impact—and even longer for them to be institutionalized.²³⁹

Peace and social transformation came to Northern Ireland without a national truth-seeking process. Truth telling—and the national attention and momentum that it builds and bestows upon the post-truth reform process—was arguably unnecessary in Northern Ireland. The Belfast Agreement was itself an organizing vehicle around which all parties could mobilize and derive energy for reform. The absence of truth telling came primarily at the expense of individual victims, many of whom will never receive accountability for harms suffered. However, the qualified successes of policing and equality reforms in Northern Ireland have helped to transform life for Catholic citizens, giving them a new stake in citizenship and in their country.

Lessons for the United States

Truth-telling processes should be calibrated toward advancing the goals of reform.

Northern Ireland's successes demonstrate that truth telling is not always necessary for some measure of reform to take hold. There are trade-offs to expending political capital over contesting the narrative of conflict instead of deploying it in pursuit of tangible policy change. However, there may be strategic ways that truth telling can be deployed to complicate the prevailing narrative in ways that give prominence to marginalized voices, such as the Bloody Sunday Inquiry, which helped to exonerate Catholic victims and hold British troops responsible for their deaths. In such an approach, individual victims may be best supported through reparations and restorative justice approaches, the latter of which is common in the Northern Ireland context.²⁴⁰

Police reform can succeed in enhancing the legitimacy of the police in the eyes of the communities they serve. The Patten Report demonstrates the ways in which human rights, accountability, and community partnership can be the foundation of a new approach to policing, helping to improve community perceptions of police performance and legitimacy. In particular, the commission's approach to accountability suggests that multiple nodes of oversight may be necessary to improve perceptions of the police, both internal and external to the institution.

Addressing structural inequality may be the most critical way to reduce inter-group hostility and must go beyond antidiscrimination measures. Northern Ireland long pursued the policy goal of improving fairness in employment and reducing discrimination for racial and religious minorities. But these measures failed to achieve results, and the grievances continued to fester. In this way, the United States parallels Northern Ireland in passing civil rights legislation that has not been wholly successful in ameliorating institutional discrimination and segregation. An affirmative commitment to equality—in legislation, institutional architecture, and programming—helped to achieve a transformation of social relations that meant socioeconomic status no longer always lined up with religious and cultural identity, a critical change for highly polarized communities.

Adopting, Adapting, and Innovating Truth, Redress, and Reform in the United States

This current period of introspection in the United States provides a new opportunity for the country to renew its experiment of a democracy grounded in racial equality. And though the United States faces its own unique circumstances, the experiences of Brazil, South Africa, and Northern Ireland provide important insights that TRR practitioners in the United States should consider as they seek to maximize this moment. As in the case of Brazil, the United States faces its own challenge of national amnesia about the scope and scale of racial injustices perpetuated after the abolition of slavery. TRR efforts will have to overcome this culture of forgetting; for this reason, the United States should pursue truth-telling efforts to help recalibrate a national narrative to include acknowledgment of significant harms.

However, given the contested nature of truth in the United States, national truth-telling efforts around past harms should be scoped narrowly and calibrated toward achieving specific goals. A national truth commission is unlikely to have either the political capital or ability to engage in a broad, exhaustive historical inquiry of the roots of racial injustice—nor does it need to. Instead, a national truth commission might be most effective in examining discrete events of state-sanctioned violence, such as Northern Ireland did in the case of the Bloody Sunday Inquiry, and also in investigating patterns of enduring harm by the government in specific sectors such as criminal justice, housing, healthcare, and infrastructure. This narrower scope is manageable and allows subnational TRR to lead in-depth, truth-seeking efforts that can focus on localized histories, policies, and impacts of harm.

Putting subnational efforts in the lead of truth seeking offers several advantages. First, it capitalizes on the existing momentum of local TRR initiatives in the United States. Second, it allows for more in-depth analysis and nuance of dynamics in different regions and among different demographic groups, as evidenced in Brazil's subnational work. It further allows for greater levels of public participation and is likely to reveal locally legitimate remedies from the perspective of harmed communities. However, as also learned from Brazil, local truth commissions can be best empowered through the vessel of a national initiative, which can synthesize and amplify their rich findings and recommendations and broadly socialize them under the auspices of a national institution. To succeed, U.S. TRR activists will need donor support for greater horizontal partnerships and information sharing across local TRR initiatives, as well as for

A national truth commission might be most effective in examining discrete events of state-sanctioned violence and also in investigating patterns of enduring harm by the government in specific sectors such as criminal justice, housing, healthcare, and infrastructure.

planning how local efforts can inform and connect to a national commission should current legislative proposals move forward.

A more targeted national truth-seeking effort should leverage truth in service of reform. Like Northern Ireland's Patten Commission, which had truth-commission-like elements, U.S. TRR programs should seek to identify where the relationships between state and citizens have broken down and then recommend legal, procedural, and institutional remedies. The Patten Commission also teaches that commissions specifically devoted to sensitive institutional reform can reshape entire institutions if they are independent, staffed with experts rather than politicians, and empowered to approach issues through a human rights lens.

Moreover, for issues such as the equality agenda in Northern Ireland, where the causes of socioeconomic harms were well-understood and well-documented, truth-telling proved to be an unnecessary element to achieve the desired reform. Meanwhile, South Africa's truth commission fell short in making parallel gains, revealing the importance of having clear protocols to facilitate the investigation of structural harms and violations of socioeconomic rights in the context of a truth commission. A successful U.S. approach to addressing socioeconomic harms through TRR processes could break new ground in the transitional justice field; so far, an iconic or breakthrough tool for addressing socioeconomic harms has not emerged. This presents a unique opportunity for the United States to create new approaches that can be used by other countries facing similar dilemmas.²⁴¹ Northern Ireland's explicit focus on repairing socioeconomic harms through an affirmative equality agenda may be an example for the United States to build on.

The case studies also reveal the value of considering hybrid TRR institutions that combine truth telling with other TRR goals. For example, Brazil's Amnesty Commission used its public reparations processes—which were conducted subnationally, though funded by the central government—to provide a platform both for individual testimony and for adjudication of a remedy. This allowed for individual harms to be acknowledged and addressed, serving both a truth-telling and reparative purpose. Similarly, a federally funded, locally implemented reparations program in a U.S. TRR process could preserve the space at the national level for a truth commission to focus on structural and institutional harms—and the related reforms necessary to address them—while still addressing harms against individuals and their descendants through reparations.

This paper did not examine the many symbolic reparations initiatives that exist across all three of the cases as well, but these also play an important role in providing acknowledgement to victims and helping to reshape public memory of past harms. The United States is certainly in need of symbolic initiatives, like memorialization, that can ensure past harms are not forgotten or repeated in the future. By becoming sites of education, tourism, and public holiday celebrations, museums and memorials help to incorporate acknowledgement of past harms into society's collective memory. However, they are not enough to address the enduring socioeconomic and structural grievances that continually reignite racial division and violence.

The United States likely faces an uphill battle in translating diverse, uncoordinated subnational efforts into a comprehensive TRR program. Political transitions, such as the ones in the case studies, create the unique opportunity and space for transitional justice initiatives that grip the nation. In South Africa, the TRC was afforded a level of attention that would likely not be given a similar commission in a time of peace. In Northern Ireland, despite the piecemeal nature of its initiatives, the Belfast Agreement united these efforts under a larger, common purpose.

In the United States, the current racial awakening unleashed by George Floyd's murder is likely to be the most significant galvanizing moment of public support and political opportunity for TRR in the United States in a generation. Yet, that window may already be closing. Whether the United States can seize this energy and channel it toward the design and implementation of TRR initiatives at a national level may depend on the successes of local TRR efforts. With the right focus, adequate networks, and active collaboration, these efforts can be an important remedy for harmed individuals and communities in the United States and potentially provide the momentum necessary for action at the national level. To gain this momentum, they will have to iterate on the lessons offered here and elsewhere and innovate new models for truth, repair, and redress fit for this unique moment.

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Notes

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