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The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations

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human rights violations, prosecutions, truth commissions, deterrence effect, diffusion

Abstract

The justice cascade refers to a new global trend of holding political leaders criminally accountable for past human rights violations through domestic and international prosecutions. In just three decades, state leaders have gone from being immune to accountability for their human rights violations to becoming the subjects of highly publicized trials in many countries of the world. New research suggests that such trials continue to expand and often result in convictions, including some of high-level state officials. This article summarizes research on the origins of the justice cascade and its effects on human rights practices around the world. It presents evidence that such prosecutions are affecting the behavior of political leaders worldwide and have the potential to help diminish human rights violations in the future.

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INTRODUCTION

A new trend in world politics toward accountability for past human rights violations is taking place simultaneously in international courts, foreign courts, and domestic courts of the country in which the human rights violations occurred. These international, foreign, and domestic human rights trials are all part of an interrelated trend that Lutz & Sikkink (2001) have called the justice cascade and Sriram (2005) has called a revolution in accountability. The justice cascade is a rapid and dramatic shift in the legitimacy of the norms of individual criminal accountability for human rights violations and an increase in actions (such as trials) on behalf of those norms (Sikkink 2011). This trend has led social scientists to make human rights crimes a higher priority, generating a new wave of research on accountability (Struett 2008, Savelsburg 2010, Olsen et al. 2010, Kutnjak Ivkovic & Hagan 2011).

This article provides an overview of the arguments about the origins, spread, and effectiveness of prosecutions for individual criminal accountability for human rights violations. It is organized around three big questions:

1. What are the origins or sources of new ideas and practices concerning individual criminal accountability for human rights?
2. How and why have these ideas spread or diffused across regions and, ultimately, across the globe?
3. What is the impact of these trials?

In particular, we ask if prosecutions of human rights violations actually help prevent future human rights violations.

The justice cascade is nested in a larger norm cascade around accountability for past human rights violations. Since the 1980s, states have not just been initiating trials; they have also increasingly been using multiple mechanisms, including truth commissions, reparations, lustration or vetting, museums and other memory sites, archives, and oral history projects, to address past human rights violations (Barahona de Brito et al. 2001, Roht-Arriaza 2002, Jelin et al. 2003, Teitel 2003, Roht-Arriaza & Mariezcurrena 2006, Stan & Nedelsky 2013). These measures are often referred to as transitional justice, which is commonly understood as "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (Teitel 2003, p. 69). The increasing use of these practices attests to a broader accountability norm cascade, of which the justice cascade is only one part. A close examination of the origin, diffusion, and impact of prosecutions of human rights violations throughout the world, however, has important theoretical and policy implications, as the importance of criminal prosecutions remains unrivaled compared with that of other accountability measures (Freeman 2006).

THE INDIVIDUAL CRIMINAL ACCOUNTABILITY MODEL

The emergence of the justice cascade follows decades of efforts to have greater legal accountability for past human rights violations. Accountability refers to practices by which some actors hold other actors to a set of standards and impose sanctions if these standards are not met. There are many forms of accountability: Legal accountability is the requirement that "agents abide by formal rules and be prepared to justify their action in those terms in courts or quasi-judicial arenas" (Keohane & Grant 2005, p. 36). States have used three different models of accountability for past human rights violations: (*a*) the immunity, or impunity, model; (*b*) the state accountability model; and (*c*) the individual criminal accountability model. The immunity model, under which no one is held accountable for human rights violations, has historically been by far the most common of the three. Under the state accountability model, the state is held accountable, and it provides remedies and pays damages. Under the individual criminal model, individual state officials are prosecuted, and if convicted, they go to prison.

Prior to the 1970s, the immunity model was the norm, and state officials were protected from any individual legal accountability for

human rights violations. There were isolated historical examples but no sustained attempts at either domestic or international prosecutions of human rights violations until after the Second World War (Bass 2000, Elster 2004). The seeds of the justice cascade began with the Nuremberg tribunals after World War II, and both the Nuremberg and Tokyo trials were in many ways both the beginning of the trend and the exception that proved the rule: Only in cases of complete defeat in war was it possible to hold state perpetrators criminally accountable for human rights violations. The new human rights treaties that states started drafting after World War II primarily used a state accountability model in which the state as a whole was held accountable for human rights violations and was expected to take action to remedy the situation. Much of the UN human rights system as well as the regional human rights courts uses the state accountability model. But under the state accountability model, state officials themselves are still immune from prosecution for human rights violations. It was not until the mid-1970s, with prosecutions of human rights violations in Greece and Portugal, that the individual criminal accountability model began to be used to prosecute state officials in domestic courts. The creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 was the first time since the Nuremberg and Tokyo trials that states returned to using individual criminal accountability at the international level.

Three key ideas underpin the individual criminal accountability model. The first is that the most basic violations of human rights or the laws of war cannot be legitimate acts of state and thus must be seen as crimes committed by individuals. A second and related idea is that the individuals who commit these crimes can be, and should be, prosecuted. The third idea is that the accused are also bearers of rights and deserve to have those rights protected in a fair trial (Weissbrodt 2001). These seem like simple, even obvious, ideas. But they run counter to centuries of beliefs about the immunity of state officials from prosecution. It took a major movement to put these new ideas forward, embed them in law, and put them into practice.

This new individual criminal accountability model applies not to violations of the whole range of civil and political rights, but rather to those of a small subset of political rights sometimes referred to as the rights of the person, especially the prohibitions on torture, summary execution, and genocide, as well as to war crimes and crimes against humanity. Practices of state accountability for these human rights violations have not diminished but continue to exist side by side with the trials for individual criminal accountability, and these two forms of accountability can reinforce one another. The justice cascade is also nested in a broader process of strengthening the rule of law through various forms of justice-sector reform. Although better quality rule of law is neither a necessary nor a sufficient condition for transitional justice, developments in the rule of law have contributed to transitional justice, and the success of some transitional justice measures may in turn enhance the rule of law (Carothers 2001, Domingo & Sieder 2001, Smulovitz 2002).

Most previous discussions of these issues have looked at pieces of the overall trend, for example, examining specific international tribunals and trials, high-profile foreign trials, or domestic trials in certain countries (Acuña et al. 1995, Acuña & Smulovitz 1996, Barahona de Brito et al. 2001, Schabas 2001, Macedo 2004, Roht-Arriaza 2005, Acuña 2006, Schiff 2008, Struett 2008). For example, there are a number of excellent studies of the ICTY and justice in the Balkans (Bass 2000, Hagan 2003, Subotić 2009, Nettelfield 2010, Orentlicher 2010, Kutnjak Ivkovic & Hagan 2011). What is often missing, however, is attention to the larger decentralized but interactive system of accountability that is emerging around the world for violations of core political rights, with fragmented enforcement that is primarily undertaken by domestic courts (Sikkink 2011).

This system of accountability is starting to emerge because many domestic and international courts are now drawing on a body of domestic and international law that permits

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individual criminal accountability for core crimes (Scheffer 2011, Teitel 2011). The system is decentralized because there is no single international court or agency deciding who should be prosecuted, yet it is interactive because decisions made at one level have effects at other levels. Even the International Criminal Court (ICC) is doing only a small part of the work of enforcement. Decisions about whom to prosecute are made in hundreds of different courts around the world, most of them domestic courts. As such, enforcement is often fragmented and haphazard; whether a state official is prosecuted for human rights violations depends mainly on whether determined and empowered domestic litigants are pressing for accountability.

To understand how this new model of accountability for violations of core political rights now functions at the global level, we need to look at the entire international system, including the ICC. The Rome Statute of the ICC embodies this new model of individual criminal accountability, but because of the importance of domestic courts, the ICC is not the main institution through which the new model is enforced. The Rome Statute mandates that the Court function under a doctrine of complementarity, in which domestic courts have priority and the ICC can exercise jurisdiction only if domestic courts are unwilling or unable to prosecute (Schabas 2001). The doctrine of complementarity in the ICC can be seen as a broader expression of the new model in which the primary institutions for enforcement are domestic criminal courts and the ICC and foreign courts are the backup institutions or the last resort when the main model of domestic enforcement fails. Orentlicher (1995, p. 2562) calls this "domestic enforcement with an allowance for 'fallback' international jurisdiction," and Roht-Arriaza (2005, p. 200) refers to foreign trials as a "back-stop" for domestic justice. Such backup institutions, however, are necessary to create a fully functioning international model. If the model depended only on domestic courts, powerful former members of the military and state officials could always escape accountability by blocking domestic trials or going abroad to a friendly third country. The backup provided by foreign and international prosecutions makes such options less likely than before. The move to create a more transnational system of accountability reduced the control that perpetrators in any single country have in preventing prosecution.

Many critics of the ICC or the specialized courts have not understood the role of these courts as backup institutions in a global system of accountability. For example, one observer argues that international tribunals "have squandered billions of dollars" and that domestic solutions would be more cost effective (Cobban 2006, p. 22). It would indeed be costly if the ICC or international tribunals were designed to provide comprehensive criminal justice by themselves, but that is not how the decentralized system is currently operating. The use of international tribunals or foreign courts is the exception and not the rule in the new model of accountability, as they serve merely as a backup. The new decentralized system of enforcement depends primarily on human rights violations prosecution in domestic courts. Because the system is decentralized, however, the quality of enforcement varies with the quality of the criminal justice systems in different countries.

For years, scholars were unaware of the magnitude of the move toward individual accountability because there was no worldwide data set on prosecutions of human rights violations. Without data, it was difficult to detect the presence of a new norm and the emergence of new practices. Responding to this void, various authors created data sets of transitional justice mechanisms, including domestic, foreign, and international trials; truth commissions; amnesties; reparations; and lustration. Lutz & Reiger (2008), for example, documented the prosecutions of 34 heads of state for human rights violations between 1990 and 2008. Olsen et al. (2010) created a database of trials, amnesties, reparations, and lustration in transitional countries. Kim, Sikkink, and Walling created a database of international, foreign, and domestic prosecutions of human

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rights violations and truth commissions in transitional countries (Sikkink & Walling 2007, Kim & Sikkink 2010, Sikkink 2011). These prosecutions of human rights violations involved not only heads of state, but also other high-level officials as well as lower-ranking officials.

Here, we present new data that were not available in previous work. These new data are the result of a major joint research initiative that received financial support from the US National Science Foundation (NSF) and UK Arts and Humanities Research Council (AHRC). This article presents initial data on transitional prosecutions and amnesties from the combined data set from the NSF/AHRC project (**http://www.transitionaljusticedata.com**). In the future, with additional support from NSF/AHRC, the project's database will also have global data on reparations, civil trials, vetting and lustration, and traditional forms of justice.

Figure 1 visually depicts the global norm cascade of amnesty law and prosecutions of human rights violations. It presents an overview of annual data on trends in verdicts and convictions in domestic prosecutions of human rights violations and the adoption of new amnesty laws. The figure shows the number of countries in any given year with at least one verdict or conviction in a domestic human rights prosecution and the number of countries adopting new amnesty laws.

Looking at the graph, one can see that until the mid-1980s, an increase in prosecutions is hardly noticeable. By the early 1990s, the number of such events began to increase steeply. It is striking that the rapid diffusion of the idea follows almost immediately after the end of the Cold War and the fall of the Soviet Union in 1989–1991. This figure summarizes a worldwide trend that would have been difficult to see without a comprehensive data set. The increasing use of prosecutions resulting in convictions attests to the importance of a broader accountability norm. A clear shift away from amnesties, however, has not accompanied the global accountability trend. Although the data in **Figure 1** suggest there has been a decline in the adoption of new amnesty laws, a large number of existing amnesty laws

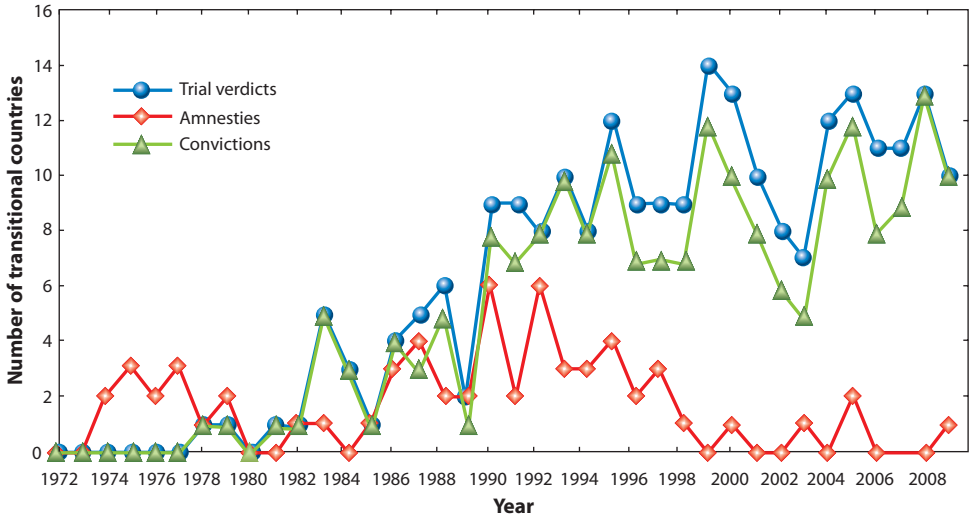

Figure 1

Trends in domestic prosecutions of human rights violations and amnesty laws, 1979–2009. The lines represent the number of countries in any given year adopting new amnesty laws (*red*) or reaching a verdict (*blue*) or a conviction (*green*) in a prosecution for human rights violations.

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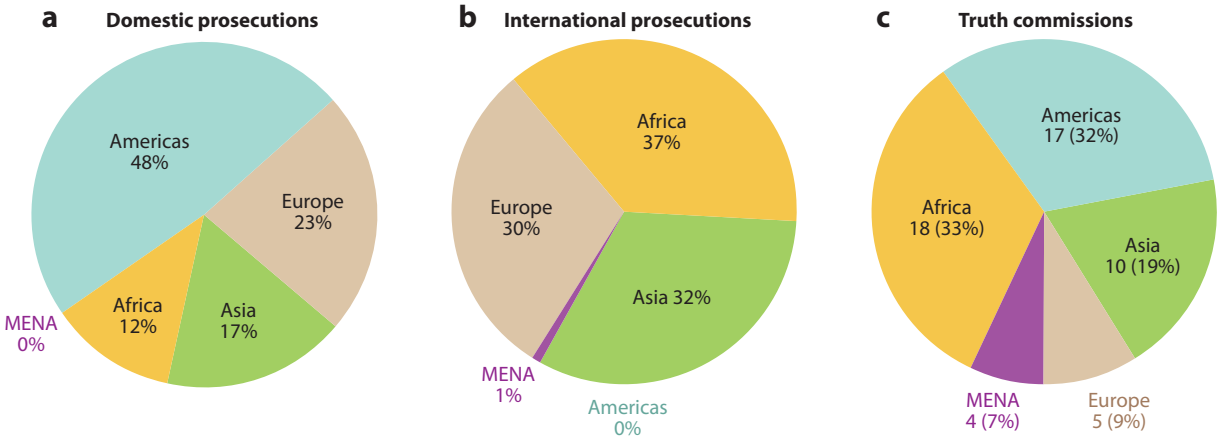

Figure 2

Regional distribution of prosecutions of human rights violations, 1979–2009: (*a*) domestic transitional prosecutions, (*b*) international human rights prosecutions, and (*c*) number (and%) of truth commissions by region. Abbreviation: MENA, Middle East and North Africa. (Trials are included as long as they began within the stated time period.)

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continue to be in place throughout the world at the same time that countries increasingly use prosecutions.

There is significant variation in the use of prosecutions of human rights violations in different regions of the world. As the pie chart in **Figure 2*a*** indicates, the trend toward domestic prosecutions of human rights violations has been most pronounced in Latin America and in Central and Eastern Europe. Prosecutions are under way in Asia, Africa, and the Middle East, but to a lesser extent than in Europe and the Americas. International prosecutions are also unevenly distributed across different regions in ways that do not simply reflect where the worst human rights violations in the world have occurred. The chart in **Figure 2*b*** shows the regions of countries whose nationals have been subject to international tribunals to achieve justice, not the countries where the prosecutions occurred. Europe and Africa are heavily represented, in large part because of the prosecutions of the ICTY and the International Criminal Tribunal for Rwanda (ICTR). No international tribunals have been set up to prosecute human rights violations in Latin America. The international prosecutions chart includes the so-called hybrid tribunals that combine international and domestic judicial features. Hybrid tribunals in Cambodia and especially East Timor help account for the significant number of prosecutions in Asia. There are also different kinds of regional variation with regard to other transitional justice mechanisms such as truth commissions. For example, **Figure 2*c*** shows that truth commissions have been used most frequently in Africa and the Americas.

THE EMERGENCE AND THE SPREAD OF THE JUSTICE CASCADE: SOURCES OF NEW IDEAS AND PRACTICES RELATING TO INDIVIDUAL CRIMINAL ACCOUNTABILITY

The justice cascade does not have a single source (see **Figure 3**). Rather, we can think of two main streams from different sources flowing in to create it, streams that began to merge at the start of the twenty-first century. By 2010, the individual criminal accountability model had gained momentum and been embodied in international law, international and domestic institutions, and the global consciousness. It is this momentum that makes cascade an apt metaphor.

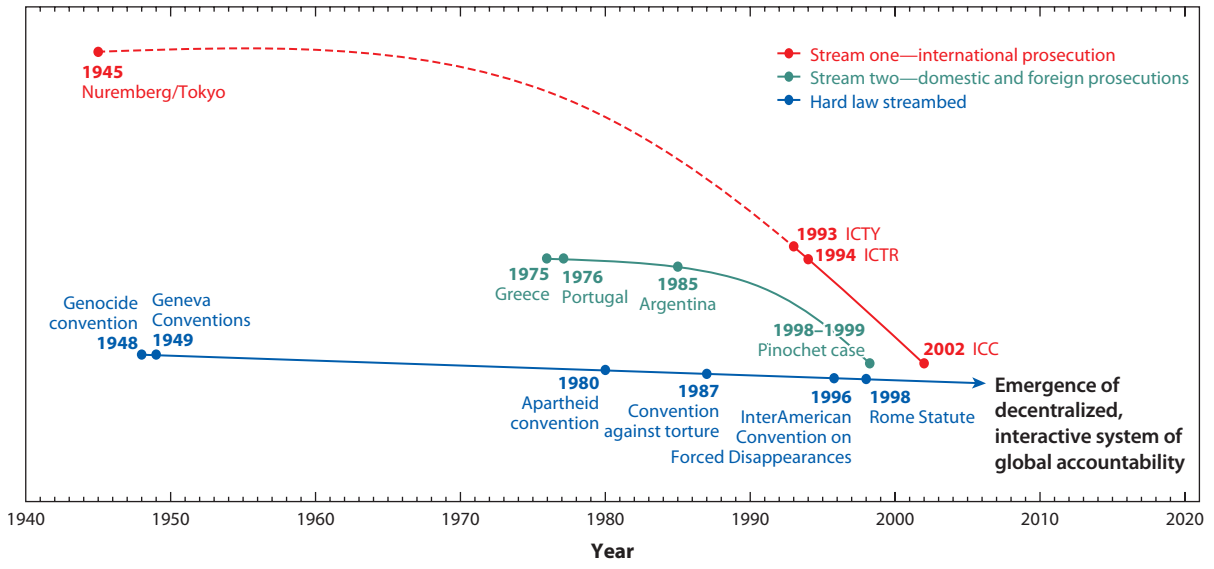

Figure 3

The emergence and the spread of the justice cascade. Abbreviations: ICC, International Criminal Court; ICTR, International Criminal Tribunal for Rwanda; ICTY, International Criminal Tribunal for the former Yugoslavia.

The first stream began with the Nuremberg trials in 1945 and 1946, but it temporarily dried up or went underground for almost 50 years until states created the specific ad hoc international institutions the ICTY and the ICTR in 1993 and 1994, respectively. These tribunals in turn put into practice and furthered the doctrine and jurisprudence of individual criminal accountability.

The second stream involved domestic and foreign prosecutions for individual criminal accountability, beginning in southern Europe with trials in Portugal and Greece in the 1970s. The 1985 trials of the juntas in Argentina generated broad international attention, and a series of prosecutions began in Latin America, including Bolivia, Guatemala, Panama, Chile, and Haiti. These prosecutions often moved slowly and were contested, uncertain, and perceived as still dangerous and reversible. When activists were blocked in their domestic courts, they sought to use foreign courts to prosecute domestic perpetrators of human rights violations. These foreign prosecutions, often using some form of universal jurisdiction, became part of the second stream of the justice cascade. By 1998, the arrest of General Augusto Pinochet of Chile in the United Kingdom as a result of an extradition request from Spain had become the most vivid illustration of the potential power of these foreign prosecutions (Roht-Arriaza 2005).

Underneath these two streams of prosecutions, states and nonstate actors worked to build a firm streambed of international human rights law and international humanitarian law that fortified the legal underpinnings of the cascade, culminating in the Rome Statute of the ICC. One of the central principles of penal law is that one cannot be punished for doing something that is not previously prohibited by law. As states shored up the legal basis for the justice cascade, they assured that it would not be another ephemeral flow, but rather a sustained political and legal development. The Nuremberg and Tokyo trials did not rest on a sturdy legal foundation, so they were more open to accusations of victor's justice and retrospective justice. By the time Pinochet was arrested in London

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in 1998, however, a firmer legal foundation for individual criminal accountability had been built up, and even the conservative UK Law Lords concluded that, on the basis of law that Pinochet himself had ratified (the UN convention against torture), he could be extradited to Spain to stand trial for torture committed in Chile during his regime. Although Pinochet was allowed to return to Chile for health reasons, he was facing domestic prosecution for human rights violations when he died.

The two streams and the underlying streambed initially appeared to be quite separate from one another. For example, the creation of the ICTY owed little to the domestic prosecutions that preceded it. The ICTY was seen as the first international tribunal since Nuremberg and Tokyo, and its creators drew their inspirations almost solely from that precedent, not from the domestic prosecutions taking place around them. The stories behind these developments have been told in a series of excellent books (Bass 2000, Power 2002, Hagan 2003, Roht-Arriaza 2005, Lutz & Reiger 2008, Schiff 2008, Struett 2008), but rarely do all the pieces of this global trend get put together in one place.

There have been various efforts to explain the emergence of the trend toward prosecution of human rights violations. Lutz & Sikkink (2001) argued that the justice cascade was not spontaneous, nor was it the result of the natural evolution of law or global culture in the countries where the prosecutions occurred, but rather of changes in ideas and practices fueled by the human rights movement. According to these authors, the justice cascade started as a result of the concerted efforts of small groups of public interest lawyers, jurists, and activists who pioneered strategies, developed legal arguments, recruited plaintiffs and witnesses, marshaled evidence, and persevered through years of legal challenges (Lutz & Sikkink 2001). The work of these norm entrepreneurs was facilitated by two broader structural changes in the world, the third wave of democracy and the end of the Cold War. The first multiplied the number of transitional countries open to the trends described here, and the second opened space for countries to consider a wider range of policy options (Sikkink 2011). Lutz and Sikkink's argument was based on qualitative and historical research but was not yet supported by cross-national quantitative studies.

Recently, there have been scholarly attempts to integrate dispersed theories of the adoption of prosecutions of human rights violations from various disciplines and subdisciplines of political science, sociology, criminology, and law (Pion-Berlin 1994, Huyse 1995, Skaar 1999). Yet, despite the emergence of recent examples of cross-national analysis (Dancy & Poe 2006, Olsen et al. 2010), the research has been dominated by case studies of a single nation or a small number of countries. Although the details of the prosecution process can be traced closely in these case studies, the variations in the way decisions to begin prosecutions of human rights violations are made within different countries cannot be examined easily. Kim (2012) conducted a cross-national analysis of explanations for the emergence of transitional justice mechanisms. In the study, after surveying the existing literature in the fields of human rights, transitional justice, democratization, and international relations, he tested three key theories: the balance of power between old and new elites, transnational advocacy networks, and diffusion theory. The validity of each theory had been attested to separately in case studies of individual countries, but it had not yet been tested simultaneously in a cross-national study of global samples.

Power balance theory explains the adoption or nonadoption of prosecutions of human rights violations to be primarily the result of the balance of power between different societal groups in transitional societies. In countries that have experienced a ruptured transition after a revolution or the loss of a war, previously powerful elites are often weakened and are unable to dictate any protections from prosecution. In negotiated transitions, however, previous power holders often build a blanket amnesty from

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prosecution into the transitional pact. Thus, power balance theory suggests that prosecution of human rights violations will be possible in countries that experience a ruptured transition, such as what occurred in Argentina after the loss in the Falklands war, but not in countries, such as El Salvador, that have a negotiated transition to democracy (McAdams 1997, Olsen et al. 2010).

Scholars of international relations have stressed the important role of individuals and advocacy groups in bringing normative changes to politics (Finnemore & Sikkink 1998, Keck & Sikkink 1998). These advocacy networks bring together actors from domestic and international nongovernmental organizations (NGOs) and civil society organizations as well as parts of international organizations. Some scholars stress the importance of civil society groups (Roht-Arriaza 2002), whereas others focus on the role of international organizations (Buergenthal 1994) in promoting trials.

Diffusion occurs when the actions and choices in one country are "systematically conditioned by prior policy choices" made elsewhere in the world (Simmons et al. 2006, p. 787). A growing number of studies show that many international policies and actions diffuse: They are rapidly adopted by many different countries for reasons that appear to have less to do with their domestic politics or internal pressures, and more to do with imitating policies other countries are adopting (Most & Starr 1980, Starr 1991, Simmons & Elkins 2004, Gleditsch & Ward 2006, Simmons et al. 2006, Simmons 2008). Some scholars talk about "contagion" models of diffusion in which one state "catches" a new policy or practice (Whitehead 1996, Starr & Lindborg 2003). Diffusion would occur in transitional justice if the decision to proceed with a prosecution of human rights violations in one transitional country is influenced by previous choices of other transitional countries. In earlier studies of prosecutions of human rights violations, the contagion effect was often introduced but found insignificant owing to a lack of evidence (Pion-Berlin 1994). However, after witnessing the dramatic increase in these prosecutions around the globe, scholars are increasingly suggesting that the concept of individual accountability has diffused globally (Roht-Arriaza 2002, Sikkink & Walling 2007, Hayner 2011).

Kim (2012) finds strong evidence to support the transnational advocacy networks and diffusion explanations for the adoption of prosecutions of human rights violations. First, active domestic and international advocacy for individual criminal accountability proves to be a key factor guaranteeing persistent and frequent use of prosecutions of human rights violations. Second, affirming diffusion theory, Kim's study shows that transitional justice experience in neighboring countries is a relevant factor for explaining the use of domestic human rights trials. Interestingly, transitional countries are most sensitive to such measures adopted by other culturally or linguistically similar countries. Kim finds that the power balance explanation—which has been the prevailing explanation—is valid only for the immediate use of prosecutions of human rights violations. The level of repression in the former authoritarian regime, the past history of political instability, and prevailing economic conditions are also relevant. Kim's findings provide a comprehensive test for three key theories explaining the emergence and spread of prosecution of human rights violations. When combined, these three theories adequately explain both the early and late adoption of trials. By its very nature, the diffusion factor provides a relatively weak explanation of the cases of global and regional pioneers of human rights trials, such as Argentina or Greece. However, the balance of power and transnational advocacy factors, or some combination of the two, are strong determinants of the start of trials for those early adopters. However, as time passes in transitional societies, the power balance factor becomes increasingly less relevant, and the impact of transnational advocacy and peer pressure from like-minded countries grow stronger. Thus, it is a combination of peer pressure and

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transnational advocacy networks that explains the delayed transitional justice phenomenon.

Qualitative work shows that the spread of ideas and practices of transitional justice moves in multiple directions. Practices of individual accountability used in the domestic legal system to address common crime are applied within the same domestic system to state officials accused of human rights violations. These practices then spread from one country to another in a process scholars call horizontal diffusion. Thus, when the Uruguayans started using prosecutions, they were often drawing on models that diffused horizontally from neighboring Argentina and Chile. Vertical diffusion also occurs, and it takes two forms: bottom up and top down (Daley & Garand 2005, Graham et al. 2012). Bottom-up vertical diffusion occurs when an idea or practice moves from one specific country to an intergovernmental organization or an international NGO. Top-down vertical diffusion occurs when practices of individual accountability move from an international actor to a national one, for example, when international or regional tribunals encourage states that have not yet used individual criminal accountability to do so in their domestic legal system.

The justice cascade started in the semiperiphery of global politics and diffused outward and upward through horizontal diffusion from one country to another and then via bottom-up vertical diffusion from individual countries to intergovernmental organizations and international NGOs. Any analysis of the justice cascade thus needs to be attentive both to developments at the international level and to explanations at the domestic level. Developments in regional law and domestic politics, first in Southern Europe, then in Latin American, permitted human rights activists to press for greater accountability domestically; and in particularly fortuitous situations, these developments also made individual criminal accountability possible. Multiple domestic experiences with individual accountability thus created the backdrop against which the international community developed new legal doctrines and fashioned new international tribunals, especially the ICC.

THE EFFECTIVENESS OF ACCOUNTABILITY MECHANISMS

There has been a lively debate in the political science and international law literature about the desirability and impact of human rights trials. Recent empirical studies have not been able to resolve fully a decade-long debate over the effect of prosecutions of human rights violations for improving human rights practices (Snyder & Vinjamuri 2004a,b; Sikkink & Walling 2007; Akhavan 2009; Van Der Merwe et al. 2009; Meernik et al. 2010; Nettelfield 2010; Olsen et al. 2010). Many scholars and practitioners believe that such trials are both legally and ethically desirable and practically useful in deterring future human rights violations (Roht-Arriaza 1995, Mendez 1997), whereas others believe that such prosecutions do not deter future violations and that, in some circumstances, they exacerbate the situation by provoking still powerful former state officials. Two state-of-the-field essays confirm the still unsatisfactory level of accumulated knowledge about the effect of trials. Mendeloff (2004) found many claims about the positive effects of human rights trials yet relatively little solid evidence to support those claims. Thoms et al. (2008, p. 31), after reviewing 100 recent empirical studies, conclude that "existing empirical knowledge about the impacts of transitional justice is still very limited, and does not support strong claims about the positive or negative effects of [transitional justice] across cases."

There is a growing literature that is quite skeptical about the positive effects of human rights trials. Goldsmith & Krasner (2003, p. 51) contend that "a universal jurisdiction prosecution may cause more harm than the original crime it purports to address." They argue that states that reject amnesty and insist on criminal prosecution can prolong conflict, resulting in more deaths. Snyder & Vinjamuri (2004b) also argue that human rights trials

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themselves can increase the likelihood of future atrocities, exacerbate conflict, and undermine efforts to create democracy. They claim that "the prosecution of perpetrators according to universal standards. . .risks causing more atrocities than it would prevent" (Snyder & Vinjamuri 2004b, p. 5). These arguments suggest that more enforcement or the wrong kind of enforcement can lead to less compliance with international and domestic law. In particular, they suggest that during civil wars, insurgents will not sign peace agreements if they fear they will be held accountable for past human rights abuses. As a result, these authors claim that the threat of trials can prolong war and exacerbate human rights violations.

It is difficult to evaluate the impact of transitional justice mechanisms. Conclusions depend greatly on how effectiveness is defined and what measures or methods are used to evaluate it. Effectiveness is always evaluated relative to some other benchmark, and thus, a judgment about effectiveness always involves some kind of comparison. Policy makers and activists often use three distinct forms of comparison in evaluating the effectiveness of transitional justice mechanisms: (*a*) comparison to the ideal, (*b*) counterfactual reasoning, and (*c*) empirical comparisons. We prefer to use empirical comparisons, in which transitional countries that have used prosecutions of human rights violations are compared with other transitional countries that have not.

Here, we briefly summarize the results of our previous statistical study (Kim & Sikkink 2010), which is also discussed at length in *The Justice Cascade* (Sikkink 2011). We also provide additional findings from a recent analysis (Kim & Sikkink 2013) using some of the new data in the NSF/AHRC data set. We tested various propositions that had emerged out of previous research. First, we wanted to test the proposition that prosecutions of human rights violations are associated with improvements in human rights. Second, we wanted to explore whether prosecutions contribute to human rights because, for example, they impose punishment on state officials or because they communicate and dramatize norms. Third, we wanted to test if prosecutions in one country can contribute to improvements in other countries as well, in other words, if it is possible to have deterrence across borders. Finally, we wanted to answer the main question raised by trial skeptics: Do prosecutions in situations of internal or civil war exacerbate human rights abuses?

Figure 4 provides a simple visual representation of the basic findings of the analysis—that countries with prosecutions of human rights violations tend to have lower levels of repression than countries without such prosecutions. To measure repression, we use the physical integrity index from the Cingranelli and Richards human rights database, which is a combined measure of summary execution, torture, disappearance, and political imprisonment (see Cingranelli & Richards 2010). **Figure 4** shows the changes in the average repression score of countries with different experiences with prosecutions of human rights violations. On the left hand side is the measure of repression: the higher the number, the higher the level of human rights violations. Within each graph, the red line indicates the global means, that is, the changes in the yearly mean of the repression score for all the countries in the analysis, both those that have prosecuted human rights violations and those that have not. In panel *a*, we compare these global mean repression scores with the repression scores of countries with prosecutions (*gray line*) and those of countries without any prosecutions (*blue line*). The distinction between the lines becomes clear and remains stable after 1994. After that time, the mean repression scores of the group of countries without prosecutions are constantly above the average global level of human rights violations, whereas the mean repression scores of the group of countries with prosecutions are below the average. Panel *b* compares the global mean repression scores with the repression scores of countries with a single prosecution year (*green line*) and those of countries with multiple (2–20) prosecution years (*purple line*). Although countries with one prosecution year have below-average

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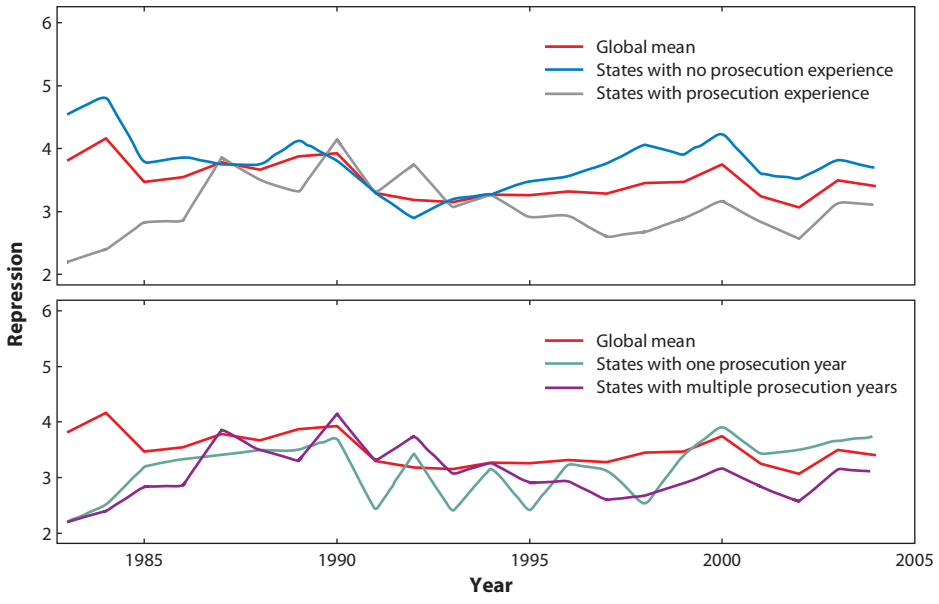

Figure 4

Changes in mean scores of repression by human rights prosecution experience.

mean repression scores for most of the time period, states with multiple prosecution years tend after 1994 to have more stable and lower repression scores than the global average. These are still just averages, and the reader who wishes to see the regression tables should look at the original article in *International Studies Quarterly* (Kim & Sikkink 2010).

In many ways, our findings are consistent with previous studies. Democracy, civil war, economic standing, population size, and past levels of repression have a statistically significant and substantively important impact on levels of repression. But in addition, prosecutions of human rights violations have a strong and statistically significant downward impact on levels of repression. When controlling for all other relevant factors discussed above, the mean levels of repression in countries that have had a prosecution are lower than those of countries that never had a prosecution. Moreover, not only does prosecution experience matter; so, too, do the persistence and frequency of prosecutions. The level of repression decreases as the number of years with prosecutions of human rights violations increases in a country. If a country were to move from the minimum (0) to the maximum possible number of prosecution years (20), this would bring about a 3.8% decrease in the repression scale.

In sum, we find that countries that have prosecuted human rights violations have better human rights practices than do countries that have not. In addition, transitional countries that have experienced more prosecutions over time (and thus a greater likelihood of punishment for past human rights violations) have better human rights practices than countries that have not had, or had fewer, prosecutions. Contrary to the arguments made by some scholars, prosecutions of human rights violations have not tended to exacerbate human rights violations.

The main criticism of prosecutions of human rights violations by some scholars is that they can lead to greater repression, especially in situations of civil war because the demand for such prosecutions can delay a peace agreement. Because civil war is associated with human rights violations, anything that prolongs war could exacerbate human rights abuses. In

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our sample, 53 countries—265 country years (18%)—were categorized as having had a minor or major civil strife after transition. In addition, 16 countries—124 country years (8.4%)—were categorized as having gone through a transition from a civil war situation. We were able to use these variations within our sample to examine the different effects of prosecutions under the situations of past or current civil war. We find that the independent effects of prosecutions on repression are still significant in situations of civil war. Although, as previous studies have shown, civil wars continue to be associated with worsening human rights situations, prosecutions of human rights violations during civil wars do not make the situation worse. Basically, controlling for war, our results show that prosecutions in countries that have undergone a transition from civil war do not have a different impact on repression than those in countries that have undergone other types of transitions. This finding provides counterevidence to the argument that prosecutions in civil war situations are less effective. Although an involvement in civil war certainly exacerbates governmental repression, prosecution experiences still appear to have a positive impact on human rights protection in those situations when compared with other civil conflict states with no prosecutions of human rights violations.

We also tested whether prosecutions of human rights violations have a deterrence effect across borders (Kim & Sikkink 2010). We already know that countries are more likely to prosecute human rights violations if other countries in the region are doing the same (Kim 2012). This is why such prosecutions show a strong regional clustering. But what happens if a country in a region does not prosecute human rights violations even though many of its neighbors do? Does it benefit from a deterrence effect resulting from its neighbors' prosecutions? Our analysis shows that the presence of prosecutions of human rights violations in countries geographically proximate to a particular country significantly decreases the level of repression for the latter, which suggests a possible deterrent effect of such prosecutions beyond borders. A transitional country with no prosecution activity at all can achieve a deterrent effect similar to a country with its own prosecutions, if four or more of the nonprosecuting country's neighbors already have prosecutions.

This research calls into question the claim by trial skeptics that prosecutions of human rights violations aggravate poor human rights practices. We conceptualize such prosecutions as an increase in the enforcement of existing human rights norms. This kind of enforcement involves individual criminal sanctions for state officials who engage in human rights violations. The prosecutions data show that there has been an increase in enforcement and in the costs of repression, which is likely to be perceived by government officials who make choices about the degree of repression to exert. We cannot distinguish these costs, but we believe they are both the economic and political costs of the formal sanctions (lost wages, litigation fees, inability to participate in elections while on trial or in jail, etc.) and the informal social and political costs of the publicity surrounding the prosecutions (loss of reputation or legitimacy and the resulting loss of political and social support). At the same time, there is no reason to believe that the benefits of repression have increased. So, if the benefits of repression have remained constant and the formal and informal costs of repression have increased, the economic theory of crime predicts a decrease in crime, which is what we see in the countries that have experienced more cumulative country human rights trial years.

In our most recent paper, we find once again that prosecutions are associated with improvements in human rights conditions. In particular, we find that prosecutions of human rights violations are especially effective in deterring the use of torture and that even prosecutions that ended in acquittals correlate with lower incidence of torture. Second, we find that prosecution processes and convictions of high-level state officials appear to have a stronger deterrence effect when compared with prosecutions and convictions of low-level officials. In addition, high-level prosecutions and

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convictions are associated with improvements in a wider range of physical integrity rights. Our study shows that high-level prosecutions correlate with lower extrajudicial killing as well as decreased use of torture (Kim & Sikkink 2013).

In this recent paper, we argue that although the whole process of prosecution is associated with improvements in the human rights situation, those prosecutions that result in convictions appear to have a greater effect than those that do not. Prosecutions of human rights violations are also associated with decreased use of torture, even if they do not reach convictions or if they end in acquittal. This has an important practical and theoretical implication, considering the fact that torture remains one of the most prevalent human right violations. Our study suggests that, regardless of the result, prosecuting torturers could be an effective tool to diminish torture. Oftentimes, victims of human rights violations or human rights lawyers are disappointed or frustrated with any acquittal of a suspected perpetrator, but our study suggests that the even those unsuccessful efforts may not be in vain. Both through the prosecution process (e.g., arrest, detention, trials) and through public education and media exposure, prosecutions may still help improve human rights practices.

A new line of research now suggests that prosecutions of human rights violations may be more effective when combined with amnesties. Researchers studying prosecutions and amnesties (Olsen et al. 2010, Lessa & Payne 2012) have made a persuasive yet puzzling finding about the effects of amnesties. They argue that the combination of amnesties and trials produces more positive effects on human rights practices than the use of prosecutions alone. Most amnesties are designed to prevent trials, so if prosecutions occur, it is usually because the amnesties have been circumvented, often through creative litigation strategies of human rights organizations or innovative maneuvering by judges. Olsen et al. (2010) and Lessa & Payne (2012) use an accountability-with-stability argument to explain how amnesties help calm the military or police who are the targets of prosecution, thus buying time for other transitional mechanisms to exert a social effect. As many amnesties exclude some crimes (e.g., genocide) or some perpetrators (e.g., junior officers), they divide the opposition to prosecutions and prevent a united front of spoilers composed of perpetrators from forming. Also, these authors argue, amnesties help limit unhealthy expenditures on costly trials, thus assisting the transitional regime in attaining economic stability during a turbulent time. This is a promising area for future research, which will be facilitated by the complete database on human rights amnesties now available (see **http://www.transitionaljusticedata.com**). As these data have just recently become available, we have not yet incorporated them into our studies.

Protecting and improving human rights practices require that transitional countries make substantial structural changes in the nature of their domestic institutions. Such changes are not easy to make. Prosecutions of human rights violations are only one of the many forces and pressures that can contribute to positive human rights change. They are not a panacea for human rights problems; they appear to be one form of sanction that can contribute to the institutional and political changes necessary to limit repression.

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