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Culture and Procedural Justice in Transitioning Societies

Landon E. Hancock
Kent State University, lhancoc2@kent.edu

Tamra Pearson d'Estrée
University of Denver, Tamra.dEstree@du.edu

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Author Bio(s)

Landon E. Hancock is an assistant professor at Kent State University's Center for Applied Conflict Management and Political Science Department. His focus is on the role of identity in conflict and conflict resolution. Recent publications include articles in Irish Political Studies (2011), Conflict Resolution Quarterly (2011) and Journal of Peace Education (2010). His most recent book, with Christopher Mitchell, is Zones of Peace, Kumarian Press, 2007. Email: lhancoc2@kent.edu.

Tamra Pearson d'Estrée is Henry R. Luce Professor of Conflict Resolution and Director, Center for Research and Practice at the Conflict Resolution Institute, University of Denver. She has written extensively on the role of social identity in conflict dynamics, judgment, decision-making, problem-solving and evaluation. Also an experienced trainer and practitioner she has conducted workshops and training sessions worldwide. Her most recent book is Braving the Currents: Evaluating conflict resolution in the river basins of the American West with Bonnie G. Colby, Kluwer, 2004. Email: Tamra.dEstree@du.edu.

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Abstract

In any transitional justice mechanism there are tradeoffs between the search for retributive justice and the practical limitations on what can be accomplished. To date, this tension has been discussed in reference to internationally established norms of justice, which the authors argue are limited in the extent to which they can explain why certain mechanisms—such as the South African Truth and Reconciliation Commission or Rwanda's gacaca courts—have been considered successful. We argue that mechanisms that have a high overlap between local culture and elements of procedural justice are perceived as more fair and just, even to those who may not benefit—or indeed may be burdened—by their operation.

Introduction

Though justice mechanisms seek to hold wrongdoers accountable and deter future wrongdoing, societies transitioning after violent conflict may have multiple goals for their justice processes. Transitional justice refers to efforts made by states and/or the international community to address criminal acts and human rights abuses of former regimes during a transition from one regime to another (Gloppen 2005; Teitel 2000). Individual mechanisms of transitional justice differ greatly, from tribunals to truth commissions or even including indigenous forms and informal processes (Biggar 2003;

Minow 1998). The reputed success or failure of these differing mechanisms has much to do with the overall perceptions of the local populace. But what are the sources of these perceptions? In any transitional justice mechanism there are often tradeoffs between the search for retributive justice and the practical limitations on what can be accomplished in the post-conflict arena (Biggar 2003; Minow 1998; Teitel 2000). To date, this tension has been discussed in reference to internationally established norms of distributive justice; such norms are limited in the extent to which they can explain why mechanisms outside formal tribunals—such as South Africa's Truth and Reconciliation Commission (TRC) or Rwanda's gacaca courts—have been considered successful (Sriram 2007; Uvin and Mironko 2003; Wilson 2003).

In order to understand perceptions of success or failure of particular transitional justice mechanisms at the local level, this article will examine the nexus between local cultural traditions and the perception of procedural justice embodied in those particular mechanisms used. We argue that where there is a high overlap between local expressions and perceptions of procedural justice, individual mechanisms will be perceived as more fair and just, even to those who may not benefit—or indeed may be burdened—by their operation.

Goals of Transitional Justice

What are the goals of transitional justice? The primary goal of transitional justice is to allow a country that has been plagued by human rights abuses to address them in a manner that allows the country to move forward into a time of peace and development rather than to stay trapped in a past characterized by violence and hatred (Amstutz 2005; Hayner 2002; Minow 1998; Teitel 2000; Quinn 2009; Nolan 2007; Gloppen 2005).

Within this overarching goal are a number of assertions about how to successfully draw a line in time and move into a new future. One is the argument that in order to address the past, justice must be served and punishment must be meted out to all perpetrators of human rights abuses. Set against this argument is the idea that—for a variety of reasons—justice is often unobtainable and the goal should instead be a full accounting of the past in order to validate the experiences of the victims and to bring as many of the crimes as possible out into the light of day. Additional goals include the sanctioning of officials of the former regime—possibly through lustrations or fines—and the repair of harm to victims, possibly through official apologies and/or reparations or restitution.

Perceptions of Success & Failure

Societies attempt to address or meet the multiple goals of transitional justice through using one or more of a variety of mechanisms available, including tribunals, truth commissions and local mechanisms. As we begin our analysis of perceptions of success or failure for individual transitional justice mechanisms it is important to establish our method for measuring those perceptions. Overall three generally recognized elements go into a perception that a particular transitional justice mechanism is fair. The first two are focused on the outcomes; retributive justice, which is focused on adequate sanctions, and distributive justice, which is typically focused on the allocation of resources. The third is known as procedural justice and focuses on the fairness of how decisions are made (Tyler and Smith 1998). Psychological research in procedural justice has shown that people are often more concerned with how they are treated during a judicial proceeding than with whether or not they receive their desired outcomes, showing that individuals are more likely to accept adverse outcomes if they believe that the procedures used to achieve

those outcomes were fair (Tyler 2000). Rather than relying upon legal definitions of procedural justice, we will be applying international and local cultural criteria to recognized elements of social psychological frameworks of procedural justice; these criteria will be fleshed out in more detail below.

Like many complex issues, the determination of success or failure for individual transitional justice mechanisms depends upon the perspective of those standing in judgment. Expanding on Mertius' (2000) concept of different constituents for transitional justice mechanisms we could define potential constituents whose perspective on justice we need to consider to include the following: the victims of the human rights abuses, those accused of perpetrating the abuses, local elites, local populations not directly affected by the abuses, and the international community as represented by international legal organs, non-governmental organizations and international governmental organizations. It is clear that each of these constituencies might have a different perspective on whether or not an individual mechanism meets their standards for success and how well they do so.

For the international community, and for many legal scholars, the perceptions of success for any particular transitional justice mechanism not only rely upon the outcomes in terms of individuals prosecuted or people reconciled, but they also focus on the fairness of the procedures used. Social psychological research confirms that justice judgments include both outcome and procedural components, with procedural concerns at least of equal, if not more, importance than outcomes. For example, some legal scholars critique Rwanda's gacaca system because it does not provide adequate legal protections for both the accused and for prosecution witnesses (Corey 2004; Daly 2002; Lahiri 2009;

Rettig 2008). These critics use what they consider to be a universal standard for fair procedures, which seems to also include the assumption that courts are needed to channel the natural desire for revenge (Jacoby 1983).

By contrast, to outsiders it may appear that grassroots support for, or condemnation of, a particular transitional justice mechanism may have more to do with its outcomes, either retributive or distributive, than its procedures. The question of whether perceptions of outcome fairness or procedural fairness dominate a "folk" conception of what is important to local populations, local elites, victims and bystanders is an important one in helping to determine what has worked in transitional justice, why it may have worked, and how multiple mechanisms may be integrated to address both procedural and outcome needs where possible.

Culture and Procedure in Transitional Justice

The issue of culture as expressed through legal traditions is one that has been largely ignored by the academic community in its study of transitional justice. With the exception of a few scholars (Falk 2003; Fletcher, Weinstein, and Rowen 2009; Miller 2006), questions of the fit of transitional justice mechanisms with local legal traditions are rarely asked. Many argue that retributive justice is the universal preference, with restorative mechanisms used only when conditions prohibit the use of trials and other forms of retributive justice. Others have argued that restorative justice provides benefits for the victims of these crimes that retributive justice cannot; with the retributive justice argument often framed as a moral dilemma and the restorative justice argument as a

method of achieving the goals of transitional justice alongside the recognition of political necessity (Hirsch 2007; Leebaw 2003; Minow 1998).

One method to address the question of cultural fit of transitional justice mechanisms with existing legal traditions is to examine them within a framework of procedural justice. Procedural justice provides a promising avenue for inquiry because research has shown that people are often more concerned with how they are treated—how fair they perceive the process to be—than they are concerned about outcomes. In other words, individuals are more likely to accept sub-optimal outcomes for themselves if they believe that the processes used to achieve those outcomes were fair (Tyler 2000). In the psychological realm procedural justice is characterized by the study of the extent to which individuals have control over or an impact on judicial processes and the extent and nature of control over decisions made in the judicial context (Thibaut and Walker 1975). Several sets of criteria have been enumerated for the study of procedural justice, however, work done by social psychologist Tom Tyler (1988, 2000, 2006, 2009), widely recognized as an authority on the subjects of procedural justice, trust and legitimacy, focuses on four interlocking concepts of the neutrality of the forum, the trustworthiness of the authorities, treatment with dignity and respect, and the opportunity for participation or voice.

Tyler considers procedural justice concerns to be universal, although studies show that the meaning of justice can "vary depending on the nature of the dispute or the allocation involved" (Tyler 1988, 107). While the work done by Tyler and others focuses on basic settings—formal versus cooperative—one could reasonably extrapolate that, like distributive justice, the meaning of procedural justice could also depend upon the local

traditional context within which it is embedded. Tyler looks at courts versus police to create his typology of more formal to less formal—or more cooperative. This work seeks to shift the contextual debate to examine forums based upon folk or traditional conceptions of procedural justice as opposed to more formal conceptions of procedural justice usually characterized by formal court settings and the trappings recognizable by most readers from industrialized states.

Procedural justice concerns seem to be shared at the level of the society, as norms, rather than determined by individual preference. Tyler's work showed that individual characteristics had no impact upon criteria used to assess procedural justice, suggesting "definitions of the meaning of justice within particular settings may be part of the cultural beliefs shared by members of [that] society" (Tyler 1988, 132). This cultural congruity within a context also facilitates acceptance of decisions made in these settings since it is likely that parties will share a conception of procedural justice. Shared conceptions of a just process will lead to shared acceptance of the outcomes as just.

Although one could argue that comparing transitional justice mechanisms like South Africa's TRC and Rwanda's gacaca courts is a bit like comparing apples to oranges, we feel that the use of procedural justice criteria, when viewed through the lens of cultural congruency, can tell us something about why those who accepted these venues as valid did so, as well as shed light on why these venues were rejected by others. Overall we understand that, even though each transitional justice mechanism was designed to promote reconciliation to a greater or lesser degree, it is difficult to measure both mechanisms by the same standards of retributive or distributive justice because they were each designed to have different outcomes; with one focused on storytelling and the other

on restitution and punishment. However, as outlined by Thibaut and Walker, Leventhal, Tyler and those in alternative dispute resolution (ADR), the process by which parties attempt to resolve their differences may in fact be more important than the outcome of winning or losing (Tyler and Smith 1998, 601; Vidmar 1992, 224). Koh found that Tyler's and Leventhal's criteria were present in mediation, noting that "[p]rocedural justice is immeasurably important in both mediation and litigation in determining the participating party's satisfaction and likely adherence to the results" (Koh 2004, 176). We argue that if one can successfully compare judicial and non-judicial forums by using procedural justice criteria as Koh has done, then it should be eminently possible to do so with transitional justice forums like the TRC and gacaca.

International or Formal Conceptions of Procedural Justice

Most studies of procedural justice have been undertaken in Western societies and have largely concerned themselves with the interactions of individuals with criminal justice systems—either in formal court settings or in more informal interactions with law enforcement (Hauenstein, McGonigle, and Flinder 2001, 40-41)—or with group decision-making in organizational settings (Paese, Lind, and Kanfer, 1988). Individuals within a given society are usually aware of society's norms of procedural justice and use these norms to assess their own or other's interactions with decision groups or authorities (Tyler 1988, 132). Given the dominant legalistic and individualistic culture of the West, particularly the United States, Western norms tend to place high value on formal processes that stress the neutrality of decision-making forums and the protection of civil rights for the accused (Vinjamuri and Snyder 2004). Criticisms of alternative forums such as gacaca most often come from political and legal arenas and are largely concerned with

the unwillingness or inability of these forums to provide for an adequate defense for the accused, a lack of legal training for judges, prosecutors and the like, and a possible lack of equality in punishment for offenders (Amnesty International 2002; Betts 2005; Brown 2010; Clark 2010; Corey 2004; Uvin 2000; Megwalu and Loizides 2010). These legal criteria for justice processes are not the same as what social psychological research tells us is important to most participants in justice proceedings. There the priorities are those identified above, the neutrality of the forum, trustworthiness of the authorities, perception of treatment with dignity and respect, and the opportunity for participation or voice. In addition, while the importance of procedural justice can be found across cultural contexts, the shape of what is considered to be procedurally just may vary according to particular context (Lind and Earley 1992; Morris and Leung 2000).

Folk or Local Conceptions of Procedural Justice

Morris and Leung's (2000) review of social psychological research in justice shows that while cultural dimensions of a society (collectivist vs. individualist) can have an impact on perceptions of distributive fairness, cross cultural evidence suggests that procedural justice perceptions are determined by the same, or similar, perceptions of fairness that characterized Thibaut and Walker's original studies. Their review points out that in diverse, largely northern societies, criteria of having a voice in the process, perceiving concern by the authorities, and receiving treatment with dignity and respect all played important roles in the perception of procedural justice felt by disputants in public and private settings (Morris and Leung 2000, 115). Given these findings we believe that a fruitful starting point for our analysis is to examine the cultural expressions of Tyler's four elements of procedural justice, outlined above, in each of our case studies. As an

example, one of the defining features of South Africa's TRC was its provision for public hearings, which, in Hayner's estimation helped shift the TRC's "focus from *product* (its final report) to *process*, engaging the public as an audience and encouraging press coverage of its issues over a longer period of time. A transparent process also helps to assure the public that there is no cover-up of the evidence, nor a blatant political bias in the commission's work" (Hayner 2002, 225, emphasis in original). Such a transparent process encouraged trust in the authorities, provided voice to victims, and showed parties being treated with dignity and respect. We will engage in similar investigation with two transitional justice mechanisms: Rwanda's gacaca and South Africa's Truth and Reconciliation Commission.

Culture and Process in the TRC

South Africa experienced thirty years of armed resistance against its Apartheid regime and during this process the country suffered from massacres, killings and severe discriminatory policies against its majority non-white population. After the election of Nelson Mandela in 1994, with the considerable input of civil society members, the South African Parliament passed the *Promotion of National Unity and Reconciliation Act* in mid-1995 and with the lead of Archbishop Desmond Tutu the South African Truth and Reconciliation Commission was inaugurated in December 1995 (Hayner 2002, 40-41). The goals of TRC were to grant amnesty to those who made a full disclosure of their crimes, to give both victims and perpetrators a say in determining the truth, to restore the human dignity, to make recommendations to Parliament on rehabilitation and reparation issues; and in the long-run to help heal the victims, society and to create a new culture of respect for human rights (Borris 2002, 165; van Zyl 1999, 654). To assist in meeting

these objectives, the legislation established three committees within the TRC: the Human Rights Violations Committee (HRVC), the Amnesty Committee (AC) and the Reparation and Rehabilitation Committee (RRC) (van Zyl 1999, 654). Although the TRC did not have the power to punish people, it did not provide a blanket amnesty to all human rights violators. Since hearings were public, embarrassment, shame, remorse and marginalization from society became a sort of punishment under the exercise of the TRC (van Zyl 1999, 662).

The three committees each had a different mandate and each approached its mandate in a different fashion regarding those procedural justice elements that were incorporated into its processes. However, all three committees were informed by the tenets of restorative justice and used an adaptation of a Xosa proverb known as *ubuntu*.

The meaning of ubuntu comes from the root of a Zulu-Xhosa word, or proverb, which means that "a human being is a human being only through its relationship to other human beings" (Marx 2002, 52). Essentially it is a description of humans as belonging to a community and defining individual good within communal good. Marx is skeptical about the origins of ubuntu and whether it does actually represent a truly African way of being, as opposed to what he describes as its original meaning, a sense of hospitality and the welcoming and integration of strangers (Marx 2002, 52). Regardless of its etymology, the fact remains that ubuntu has been presented as an African mode of thought that places community harmony above individual self-interest, based on the notion—whether real or mythologized—that citizens of the New South Africa should think of the nation as a larger community. The downside, as Marx sees it, is that by focusing on communal good over individual good, ubuntu enforces conformity, and legitimizes the policies of

addressing reparations through structural changes to society rather than through help to individual victims (Marx 2002, 54).

In contrast to Marx' skepticism regarding ubuntu, Antjie Krog insists that it is not just a belief in communal harmony that enforces conformity, but is instead provides the cultural foundation upon which rests the popular understanding of the use of and need for reconciliation as a central part of the TRC. Krog's view of ubuntu is one that focuses on the interconnectedness of individuals, describing the feeling of ubuntu as "interconnectedness-towards-wholeness" in order to argue that the TRC rested on a foundation of a desire towards wholeness which led to a willingness by many victims to offer forgiveness as a step towards restoring humanity to perpetrators and to themselves (Krog 2008a, 2008b).

The question remains as to the precise role of ubuntu: was it a foundation of the TRC, generating and sustaining a desire towards wholeness and forgiveness? Was it an instrument that the TRC used to build a new nation, squashing, in the process, the natural desire of victims for retribution? Or was it a cultural embodiment for elements of procedural justice; a manner though which the TRC could show its respect for the parties who came before them and give voice to their pain while, hopefully, engendering trust and respect for both the TRC itself and the new dispensation at large. Before attempting to answer this question, we turn to Rwanda's gacaca courts.

Culture and Process in Gacaca

Violence between Hutu and Tutsi groups peaked in 1994 with a genocide of Tutsis in Rwanda that left over 800,000 dead and over 130,000 in prison on suspicion of committing acts of genocide. Even though there was a desire to bring justice to the

victims and to hold the perpetrators accountable, a sense of impunity persisted in Rwanda. "With [its] judicial infrastructure destroyed and most prosecutors and judges killed in 1994, there was no chance that [Rwanda's] national court system could prosecute all those responsible for such crimes" (Tiemessen 2004, 57-58).

Gacaca courts were established as a response to the ineffectiveness of the International Criminal Tribunal for Rwanda (ICTR) and national court system to address this backlog of untried genocide cases. In 2001, Rwandans elected approximately 255,000 people to act as judges in these courts. "The process of Gacaca is derived from traditional Rwandan community courts, in which the elders would sit on the grass—Gacaca is the Kinyarwandan word for grass—and resolve community conflicts" (Daly 2002, 356). Village elders and community members gather together on a patch of grass to discuss civil disputes and elders present a resolution to the issue in an effort to salvage social peace and cohesion in the village. The primary aim of traditional gacaca was to restore social harmony and secondarily to mete out punishments (Nagy 2009, 99). Traditional uses were for resolving personal, land, marital and inheritance disputes (Betts 2005, 743). Apuuli notes that the type of justice practiced in traditional gacaca was an unmediated folk or popular justice that depended upon a "common sense understanding rather than upon law;" modern gacaca represents a mediated form of this type of justice wherein the participants are more constrained by the apparatus of the state (Apuuli 2009, 14-15).

The modern gacaca process differs from its traditional forebears in three key aspects: The traditional process was voluntary, the traditional process was concerned with local civil and community issues and the traditional process gave community leaders

more leeway to decide individual punishments (Corey 2004, 82). Modern gacaca is a state-sponsored program, with attendance required by all community members. Unlike its traditional brethren, modern gacaca addresses criminal and civil crimes associated with the genocide. Under its initial inception, modern gacaca was concerned with what were known as category 2, 3 or 4 crimes under the 1996 Organic Law—category 1 crimes were largely reserved for those who plotted or mastermined the genocide with the other categories reserved for those who committed murder, serious nonlethal assaults or property offenses (Lahiri 2009, 323). Initially the judges were given wide latitude in sentencing and were allowed give life sentences for some crimes. A 2004 amendment from the law combined categories 2 and 3 and limited the maximum penalty to thirty years imprisonment (Corey 2004, 82-83; Lahiri 2009, 325-326).

Traditional and modern gacaca share some clear similarities, including the participation of the whole community in the process, a focus on community healing rather than just punishment, and the use of a plea bargaining mechanism to encourage truth telling with the goal of reconciliation rather than just punishment (Vandeginste 2003, 271). Additionally, much of the modern gacaca process derives from its traditional forebear. This includes the open-air setting where, unlike a formal court proceeding, everyone in attendance is allowed to fully participate. This means that judges, the accused, accuser(s) and all those present can speak out, question those giving testimony and otherwise interject their opinions. Any of the testimony can be used in determining guilt or innocence and there was no initial requirement for physical evidence (Corey 2004, 83). Recent changes in procedure have meant that the gathering of evidence is based less on hearsay and more on information gathering by local administrators assigned

to assist the gacaca judges. This information is then verified by the assembled populations, although individuals are still allowed to speak against or in defense of any person as well as ask questions (Nagy 2009, 93-94).

Another important aspect of gacaca are the extensive provisions made for plea bargaining. Provisions have been written into the gacaca law that allow for major reductions of sentences for those who confess either before the trial begins or before a verdict has been reached. Clark argues that the gacaca system facilitates reconciliation through its plea bargaining system, which reintegrates perpetrators back into the community through service—often alongside and in service of survivors and victims—as well as direct compensation to victims and survivors (Clark 2009, 315).

Overall, modern gacaca was designed by Rwanda's government to largely resemble its traditional forebear, with processes rooted in traditional gacaca and, thus, highly recognizable to the local population (Betts 2005, 743). However, as we will see below, there are serious critiques of both gacaca and the TRC processes as being unfair to defendants and/or victims. As we move to the next section, we will begin analyzing both the practices of gacaca and those of the TRC in order to determine the extent to which they correspond to established categories of psychological procedural justice.

Judging Success Based on Process

We are examining cultural expressions of transitional justice in order to determine the extent to which they correspond to established categories of psychological procedural justice. Our argument is that the higher the overlap between the processes of transitional justice mechanisms and local cultural expressions of procedural justice, the more that

such mechanisms will be perceived as fair and just by local populations, even by those who may not benefit—or indeed may be burdened—by their operation. Our analysis relies primarily upon Tyler's four criteria to examine both the South African TRC and Rwanda's gacaca in order to determine the extent to which their culturally-based processes fulfill the criteria of procedural justice.

The four criteria identified by procedural justice research outlined above and used in this analysis are neutrality, the trustworthiness of the authorities, treatment with dignity and respect, and the opportunity for participation or voice. In each case, these criteria are examined at two levels; the formal/international and folk/local. When we operationalize these concepts at both levels we are generally looking for different indicators. At the formal or international level we are generally looking for indicators that are usually present in judicial systems based on a "Western" notion of fair procedures and protections for the accused. At the folk or local level we might be looking for something slightly different. As opposed to a Western conception of justice, which concentrates on the rights of the accused and views criminal actions as harming the state, we might find indicators that community harmony would be more valued or that group norms might lead people to accept processes that are based more on informal understandings of fair treatment and less on codified rules of evidence, disclosure or procedure (Barton et al. 1983; Nader and Todd 1978; Zartman 2000b). Our understanding is that informal procedures which place a higher value on community cohesiveness and collective good over individual rights *may* be more acceptable when those procedures are embedded within or derive from cultural constructs which are highly valued in the local culture. This does not imply that everyone will be satisfied, but it is more likely that larger

portions of the local population will find these processes acceptable because they derive from local traditions.

Neutrality

We use Tyler's definition of neutrality, which is focused on participants' "judgments about the honesty, impartiality, and objectivity" of those in charge of the decision making mechanism in question, in this case, the transitional justice process. Tyler's research showed that participants believed that these authority figures should not be swayed by personal values and biases (Tyler 2000, 118, 122). This criterion appears to converge with Leventhal's criteria of the ability to suppress bias, the quality or accuracy of the decisions made, the ability to correct unfair or inaccurate decisions and the degree to which the process meets standards of fairness and morality (Leventhal 1980).

Neutrality as viewed through formal or international conceptions of procedural justice is most embodied by the sets of rules and procedures that ensure that the accused have the ability to mount the best defense possible and have some likelihood of being acquitted of their charges, especially if they are not guilty. The Nuremberg Tribunal is often cited as one of the best examples of a transitional justice mechanism where the authorities, in this case the judges, acted with a high level of neutrality; largely because they found three defendants innocent of the charges brought against them.

Neutrality at the folk or popular justice level, by contrast, is much less clear in terms of the procedures that traditional institutions should undertake in order to assure claimants or defendants that the judges or arbiters will treat all sides equally. Much as in the difference between acceptable mediators in Western societies requiring some sort of training or certification and mediators in traditional societies requiring some sort of social

position, either elected or not, in order to be acceptable to the parties (Moore 2003), it appears that the difference between judges in formal systems and judges in informal systems depends, on the one hand, the training and knowledge of the individual and, on the other hand, the social acceptability of the individual. While this is not exactly analogous it appears that informal—folk or popular justice systems—tend to rely more upon the social acceptability of the individual arbiters than upon codified procedures that protect the rights of individuals. Instead these arbiters are assumed to have the best interests of the community at heart and, unless they prove otherwise through their actions, they will generally be accorded a level of trust that goes along with their presumed neutrality (Barton et al. 1983; Zartman 2000a).

We found that the South African TRC has somewhat strong indicators for neutrality of the forum and its commissioners, but there were a few problems. Two possible standards can be applied: Western procedural justice standards on the one hand, and cultural procedural justice standards based on ubuntu on the other. By Western standards the emphasis of the Amnesty Commission on granting amnesty, particularly the preference for witness testimony favoring amnesty over that favoring prosecution, calls into question the neutrality of the forum and of the commissioners. However, when judged through the lens of ubuntu, with its preference on social restoration over individual retribution, one could reasonably argue that the AC's neutrality was focused on communal over individual good. Despite this argument, however, the fact that ubuntu—as popular as it might be—was not universally accepted as a standard by which justice should be measured, gives rise to survey evidence that showed most South

Africans felt that the amnesty provisions of the TRC were unfair to victims (Gibson 2002).

The Human Rights Violations Commission (HRVC), through the explicit focus of its creating act on the needs of victims, was seen as partial to their needs, leaning more heavily towards providing voice, dignity and respect to victims than towards presenting an image of neutrality (Chapman and Van der Merwe 2008; De Lange 2000; Garkawe 2003). In this arena the ideals of ubuntu required fidelity to compassion for victims of Apartheid and to healing the community through affirming their individual experiences. By eschewing a legal-forensic definition of the truth and distancing themselves from formal conception of neutrality, the HRVC adhered to those elements of procedural justice that were more congruent with the characterization of ubuntu as focusing on the interdependence of healing and forgiveness as cornerstones of reconciliation (Krog 2008b). Unlike the issues raised by the AC's emphasis on amnesty, the relative lack of importance accorded to neutrality by the HRVC was not seen as a major problem by most in South African society, who indicated that they overwhelmingly felt that the TRC had done a good job of helping victims by letting families know what had happened to their loved ones (Gibson 2005, 346). However, as will be seen below, the necessity for a level of selectivity did give rise to issues around equal access and the ability of all who wished to tell their stories having the ability to do so, somewhat damaging the perception of neutrality of the Commission's choice of stories to hear publicly.

Shifting to consider the procedural justice criteria in the gacaca courts of Rwanda, there are several deficiencies that lead to low perceived neutrality regardless of whether we use a Western or local lens. First, despite its prominence on the local level, gacaca is

still a state-sponsored process and was perceived to be subject to state pressure. Second, it has been seen by some as a form of victor's justice, especially when one considers that Tutsi members of the Rwandan Patriotic Front (RPF) accused of massacres are excluded from the possibility of prosecution (Corey 2004, 86; Tiemessen 2004, 65). In addition to this danger, Uvin and Mironko argue that many genocide survivors do not testify for fear of revenge and victims of rape refuse to testify because such issues are not made public in Rwandan culture (Uvin and Mironko 2003, 227). Additionally, where there were few available survivors, people gave false testimony without fear of being exposed by other witnesses, and when survivors did testify they often ran the risk of re-traumatization (Uvin and Mironko 2003, 227). Other critiques of gacaca stem largely from the international perspective and the expectation that any trial system should provide justice based upon Western standards such as the rights to representation, a speedy trial, reasonable detention times and conditions. Uvin contends that the failure to meet these conditions violates the defendants human rights, although he observed that "many people among the general population seem…in favor of the Gacaca system" (Uvin 2000, 6).

Daly (2002) notes that, at least in 2002, there was widespread support for gacaca, with a number of independent surveys reporting support as high as 80 percent and higher among Rwanda's prison population, the people who would be the most directly affected by the new courts. However, as with other aspects of criticism of gacaca there are some concerns that opponents would not be willing to express their opposition. In a public statement issued on January 23, 2006, Amnesty International criticized the Rwandan Government and expressed concerns over the intimidation and harassment of Bonaventure Bizumuremyi, editor of the independent newspaper *Umuco*, who had used

his paper to criticize the government for tightly controlling the judiciary. A colleague of Bizumuremyi's, Jean Léonard Rugambage was arrested and accused of being a *génocidaire* after he authored an article alleging that gacaca judges had used their positions for personal gain and to "settle personal feuds." These critiques lead one to question the neutrality of the forum and the extent to which opposition to gacaca, both within and without the actual process, is allowed free expression. An indicator of falling support for gacaca, and perhaps the perception of its reduced neutrality, is the fact that recent studies have shown that forced attendance and information campaigns are now required to increase participation, whereas attendance and support was initially quite high (Nagy 2009, 95).

In Longman's eyes one potentially serious problem with the neutrality of gacaca is the dual role played by judges at the lowest (category 4) level who serve both as judges and as investigating prosecutors. This is most serious during the pre-trial phase when the investigating judges have some technical assistance from the state that the defendant does not (Longman 2006, 219). However, he counters that there are two factors that mitigate against this preventing an adequate defense on the part of the accused. The first is that, like the defendant, the judges are not legal experts; meaning that the court would be tipped too far in the defendant's favor if he or she was allowed to hire an attorney while no one else had access to one. The second mitigating factor is the inclusion of the entire community in the process where, presumably, supporters and family members of the defendant would be able to speak on his or her behalf (Longman 2006, 218).

To summarize, each of these critiques, especially when placed alongside the concerns that Tutsi crimes are not being brought to trial along with the contention that

gacaca is being used to cement the power of the RPF government, violate Tyler's criteria for procedural justice, namely, they contravene the perceived neutrality of the forum and the trustworthiness of the authorities.

As noted, attendance at some sessions has been diminishing, with various reasons being given for the loss. Some reasons center around procedural justice issues, namely the sense that gacaca is not neutral because it only addresses Hutu crimes and not Tutsi ones, particularly those carried out by the RPF. Other issues raised have to do with the time required of people who would otherwise be tending their farms or engaging in the labor necessary to live. Clark notes that community-level gacaca sessions often take up a whole day and that some survivors still feel too traumatized to participate or fear retribution if they speak out (Clark 2009, 318). Part of this may be due to an initial lack of communication by the government about why prisoners were being released, generating confusion, uncertainty and fear; leaving some Rwandans feeling that the government is asking too much of them and providing too little in the way of a supportive environment for their participation (Clark 2009, 319).

In overall terms we can see that the TRC does well in terms of neutrality of the forum, though not without its detractors. The perception that both the AC and HRVC were neutral depends largely upon viewing them through the lens of ubuntu as a foundation for South African (or at least black South African) society (Krog 2008a, 2008b). The alternative view of ubuntu, that it was largely a nation-building exercise designed to convince black South Africans to give up their rights (Coertze 2001; Marx 2002; Wilson 2001), could be characterized as a Western view of ubuntu, parallel to a Western or formal view of the TRC as failing to meet legal criteria of procedural justice

rather than psychological criteria. In shifting our view of the TRC to one characterized by ubuntu we can, as Krog intimates, see that some subsequent disappointment with the TRC may come from a failure of those pardoned to abide by the tenets of ubuntu rather than disappointment that they did not receive adequate punishment (Krog 2008a, 218-219).

By contrast we can see serious deficiencies in the perceived neutrality of Rwanda's gacaca courts whether we view them through a formal lens or through a folk lens which, presumably, values this traditional method of resolving disputes and places less importance upon the legal criteria of procedural justice. From the unwillingness of the Rwandan government to consider Tutsi crimes to allegations that defendants were browbeaten or not allowed to cross-examine witnesses, it appears that the neutrality of the gacaca forum was seriously compromised (Amnesty International 2002, 24-25). That these issues were seen as serious by ordinary Rwandans could be deduced from the need to shift from voluntary attendance to mandatory attendance, often requiring authorities to round up community members who were either unaware of the gacaca session or, more likely, had chosen not to attend (Amnesty International 2002; Clark 2009). The additional problems alluded to above, the dual role of some judges, the lack of legal representation for defendants, and the pressure to plead guilty in return for lesser sentences, are more of a concern to the international community with its formal conception of procedural justice. However, these problems may also take on a more serious role to ordinary Rwandans given the problems with neutrality at the folk level.

Trustworthiness

According to Tyler people judge the trustworthiness of authorities by "whether the person is benevolent and caring, is concerned about their situation and their concerns and needs, considers their arguments, tries to do what is right for them, and tries to be fair" (Tyler 2000, 122). A key indicator of trustworthiness is the willingness of authorities to justify their decisions by giving an account of how they reached them. In this sense those arbiters that move from mere neutrality to having their decisions respected as authoritative have, in Tyler's estimation, established some trust with those whom their decisions affect. In some cases it appears that this trustworthiness can be applied to a category of people while in others it is applied to those who have "particularized personal connections" such as a neighborhood police officer, pastor or tribal elder (Tyler 2000, 122). Here we can see a potential differentiation between the Western conception of an arbiter who is trustworthy because of his or her position and a traditional conception of someone who is trustworthy because of his or her personal characteristics (Moore 2003). When authorities have established this sort of legitimacy, people no longer feel the need to inspect every decision, every outcome, because they trust the process and the authority to do right.

In the case of the TRC the commissioners needed to appear trustworthy to victims, survivors and to those who applied for amnesty. In particular, Archbishop Tutu appeared to be genuinely concerned and caring for the welfare of those victims and survivors who testified before the HRVC, often sharing their emotional pain and affirming their willingness to speak to the commission and share their stories (Shore and Kline 2006). As Tyler notes a key element of appearing trustworthy for authorities is the

justification of their decisions (Tyler 2000, 122). Given that the HRVC did not make decisions except in regard to selecting cases for public hearing, it seems that the justification of decisions is less relevant in this case. However, the AC did justify its decisions to grant or deny amnesty to those applicants who testified in public before it, strengthening the trustworthiness of that committee.

It is difficult to measure the effectiveness of the Reparations and Rehabilitation Committee (RRC) in terms of trustworthiness because they were relegated to an advisory body and held no public meetings. The contention that the South African Parliament showed little care for the troubles of survivors with their one-time payment of 30,000 Rand is one that cannot be laid directly at the feet of the RRC, which had recommended a wide range of reparations including the urgent interim reparations, individual grants, symbolic reparations, community rehabilitation programs and institutional reforms. Although mostly not implemented, this wide variety showed concern with the well-being of both victims and the wider society that—because of its inability to implement directly—may or may not have affected the RRC's level of trustworthiness.

Many from the international community criticize gacaca based on its procedural faults, most notably the lack of counsel for defendants and the minimal training given to the elected judges. According to Amnesty International the "competence of the *gacaca* judges is questionable" noting that their training is "grossly inadequate" and, more relevant to the consideration of trustworthiness, this lack of legal training may make them easier to manipulate by government officials and local power brokers (Amnesty International 2002, 38).

In the case of Rwanda's gacaca courts the trustworthiness of its authorities is different depending on the lens used to examine it. Examining gacaca with a more formal, or Western, conception of trustworthiness of the authorities is problematic both for the RPF political leadership and for the gacaca judges themselves. Regarding judges, the charges brought forth by Amnesty and others that their lack of legal training may make the judges susceptible to manipulation by government officials, reduces one's sense of their trustworthiness, as does the accusation that individual judges used their positions for personal gain; which, if true, violates both the judges' trustworthiness and the sense that gacaca itself was a neutral forum, free from personal biases (Amnesty International 2002). Looking through our informal folk lens gives a similar picture of the trustworthiness of RPF officials, namely that perception that the government is using gacaca to consolidate its hold on power and, at the same time, to shield themselves from prosecution. However, when using a local cultural lens to examine the trustworthiness of gacaca judges a different result appears. Arguments that gacaca judges lack legal competence are countered by the argument that judges have what is known as 'contextual competence' meaning that their deep understanding of the local context and the goals of gacaca in promoting reconciliation alongside meting out punishment call for a different standard for evaluating judges. Clark notes that in terms of assessing gacaca some communities have come together to address the issues behind the genocide and to support one another, while other communities have experienced an increase in tension and acrimony following the sessions. The key difference for Clark is that in the former cases there was adequate mediation from the judges that was often lacking in the latter (Clark 2009, 317). Therefore, trustworthiness in this context has more to do with the personal

qualities of the judge in question, their willingness and ability to intervene in a manner which engages the trust of the community and less to do their level of legal acumen or ability to follow the rules of gacaca procedure.

Dignity and Respect

The definition of treatment with dignity and respect seems quite simple and straightforward. According to Tyler, it means that when dealing with authorities, people feel that "their dignity as people and members of society is recognized and acknowledged" (Tyler 2000, 122). Tyler further notes that since being treated politely and with respect are essentially unrelated to outcomes, this aspect of procedural justice is "especially relevant" because it affirms an individual's status in a manner that does not rely upon a positive outcome to have a positive effect on perceptions of fairness (Tyler 2000, 122).

When examining the criterion of dignity and respect we need to examine the perceptions of all parties, victims and witnesses as well as the perpetrators or the accused, in order to determine the extent to which they felt they received adequate recognition of their dignity and respect. In addition we need to do this using both our Western and "folk" cultural lenses. Overall, we see that the TRC appears to have done a fairly good job in meeting the dignity and respect criterion in the case of both victims and of the accused, whether examined through our Western justice lens or a local, traditional lens as illuminated by ubuntu. Victims and survivors testifying before the HRVC were showered with empathy by the commissioners, especially by Archbishop Tutu, and had the satisfaction of acknowledgment of the serious crimes that they had suffered from (Graybill and Lanegran 2004, 6; Minow 1998, 71-74). The AC as well, in its own way,

met the criterion of being treated with dignity and respect. Defendants before the committee were afforded counsel and, even though they were cross examined, they were not required to profess contrition for their acts (Shore and Kline 2006, 316-317). This last point was a sore spot with many victims and some of the general public, but on the whole, as Govier (2002) notes, repentance cannot be demanded, nor forgiveness, but neither are possible without acknowledgment of the original wrong done.

In terms of treating the victims who did testify with dignity and respect, the HRVC did quite well in some respects. The appointment of Archbishop Desmond Tutu as the chair of the commission created a space within which he infused the HRVC process with Christian practices drawn from local customs. From opening prayers to exhortations and other comments, Tutu "intentionally created an environment that fostered practices that bore a resemblance to recognizable ceremonial practices" (Shore and Kline 2006, 314). In fact, the proceedings of the HRVC—the committee that Tutu chaired—differed greatly from the AC, with the former adhering to a "religious redemptive" formulation of truth while the latter concentrated on what is known as a "legal-forensic" definition of truth (Shore and Kline 2006, 313). Shore and Kline note that the overt use of religious language and symbols in the HRVC was, in fact, comforting to many of the victims and survivors. The role of religion in South Africa—whether the Black churches or the Dutch Reformed Church—has never been private nor solely concerned with the salvation and spiritual well being of just individuals (Shore and Kline 2006, 310, 315). The cultural credibility and fit of the use of religious symbolism by Archbishop Tutu and other members of the HRVC gave the proceedings the air of comfort and support, particularly with their respect for deeply-held religious values. Further, the ability of those victims

who were called to testify to tell their stories to a sympathetic and official audience also contributes to the sense that they were treated with dignity and respect, as did the lack of cross examination by perpetrators. While those who were excluded from giving testimony might have lost some sense of voice—and possibly some level of trustworthiness and respect for the process—evidence from studies by the Centre for the Study of Violence and Reconciliation showed that many who did participate likely felt that telling their stories in front of a respectful institutional body was the most useful part of the process; indicating that this criteria for procedural justice was likely met (Hamber, Nageng, and O'Malley 2000).

For gacaca the criterion of being treated with dignity and respect could be said to have been partially met. Like the TRC, the gacaca process allowed victims and survivors to tell their stories in their words (Clark 2010). In addition, the accused were also supposed to be able to tell their stories and any member of the community was allowed to speak out, ask questions or make statements about the case at hand. As noted above, Amnesty officials assert that in the pilot phase of gacaca there were instances wherein the defendant's right to speak was abrogated and that a presumption of guilt existed which, if true, would seriously impinge upon the defendant's perception of treatment (Amnesty International 2002). However, according to Clark, this interpretation of gacaca fails to take into account the local view of gacaca as something more than a legal institution with larger aims of communal reconciliation rather than just punishment (Clark 2010, 96-97). It is through this local view of gacaca that we can see some measure of success, from a communal standpoint, of gacaca in meeting the criterion of dignity and respect.

Again what we see with this criterion is that the TRC's efforts appear to be much more in line with satisfying a perception of treatment with dignity and respect, whether viewed from a formal perspective or through the folk perspective of ubuntu. By contrast, gacaca again only meets this criterion partially, and only if we view gacaca through a folk lens where communal good outweighs individual rights. Unfortunately, the other indictments of gacaca covered above do much to mitigate this communal good and to make it appear to be more in the service of the government than of individual communities.

Opportunity for Voice

In Tyler's research, participation, or the opportunity for voice, is a key element of procedural justice. He notes that individuals "feel more fairly treated if they are allowed to participate…by presenting their suggestions about what should be done" (Tyler 2000, 121). This power is the key that motivates alternative dispute resolution processes like mediation, but is not limited to arenas where individuals believe that their process participation will affect outcome. Tyler and his colleagues indicate that there is a value for people even when their influence is noninstrumental. In these cases the impact of being able to give voice and be listened to attentively reinforce an individual's sense of self-esteem and personal worth (Lind, Tyler, and Huo 1997, 769; Tyler 1987, 343). Like treatment with respect, the opportunity for voice is something that can be incorporated into many different fora; but unlike treatment with respect, the opportunity for voice may be harder to implement, particularly in fora that are based on more formal conceptions of procedural justice, such as court settings that allow for only limited participation by victims or defendants (Mertus 2000).

The TRC sought to incorporate the narratives of all who testified before it, whether they were victims and survivors or applicants for amnesty. Whether examined from a formal or folk conception of procedural justice, it appears that the opportunity for voice was met for all who sat before the HRVC or the AC. However, this opportunity for voice was lessened somewhat in terms of the HRVC's selection process for those who gave it testimony. Although it was not possible for all to tell their stories, there were just too many and the process for choosing who would appear and who would not was less than transparent. So too was the process for determining who would appear before the AC, which was problematic because of a lack of equal opportunity for applicants in prison to make their best case to the committee.

The HRVC was the most visible committee and conducted its work throughout the country, holding around eighty hearings across the country where victims were called to tell their stories. Following this the commission investigated a number of "significant" or representative cases to gather more detail. Unfortunately, with over 22,000 cases brought forth by victims or their families, the commission was unable to investigate, or even highlight them all (van der Merwe 2003, 106). What this meant was that, despite commendable outreach to the populace, the HRVC's consultations with communities were usually quite limited and the process of taking testimony in one location might last only a single day. Further, the TRC retained control over the selection of cases for public testimony, at times selecting cases more for their dramatic effect or notoriety; and in effect reducing the level of control that victims might have felt within the process (van der Merwe 2003, 111). This meant that victims who applied to the TRC had an unequal opportunity to give public testimony, though the commission summarized all of victim

statements in a "victim's volume" (South Africa. Truth and Reconciliation Commission. and Tutu 1998, 576-577). Despite all of this, the cultural lens put forth by ubuntu may have lessened the impact of selectivity for the HRVC *if* those who were not able to testify felt that the stories that were told represented them in some way and, more importantly, assisted the country at large towards reconciliation.

The gacaca process was designed to allow the maximum amount of voice for all participants through the purported ability of all present to give testimony or to ask questions. However, when viewed through a formal procedural justice lens we can see that the exclusion of RPF and Tutsi crimes lessened the amount of possible voice for those who had been their victims. The perception of victor's justice lowers the level of voice and opportunity for participation, perhaps endangering gacaca's goal of engendering reconciliation in Rwanda. However, when we limit ourselves to the process within gacaca instead of its institutional constraints we find, especially when looking through our folk lens, that the opportunity for voice is relatively strong with some exceptions (Clark 2010). These are, namely the early reports that Clark points to wherein defendants were not given equal opportunity to speak and the Amnesty International reports that defendants and witnesses were harangued (Amnesty International 2002; Clark 2009).

Still, despite the fact that actual participation in gacaca is lower than indicated by many of its proponents, Clark argues that gacaca has "unquestionably" afforded the population a "rare opportunity" to participate in Rwanda's national reconstruction and rebuilding processes (Clark 2010, 153). Furthermore, he argues that it has empowered many marginalized groups, such as women and youth, and has the potential expand

participation if the planned extension of gacaca to everyday crimes after the genocide cases are complete takes place (Clark 2010, 153).

Overall it appears that both processes have had some success in providing the opportunity for voice, though not without some criticisms. Examining both gacaca and the TRC through a local conception of procedural justice expands our ability to see potential opportunities for voice in the sense of being able to tell one's story to a sympathetic audience at the TRC or engage in a messy dialog about issues critical to individual and communal well-being in gacaca. Expanding beyond the formal view of procedural justice allows us to see these positive elements while recognizing that each process still has its shortcomings.

Conclusion

Our initial question of whether a nexus of procedural justice and cultural context could tell us more about why some transitional justice mechanisms are seen as more successful than others has only been partially answered. Rettig's analysis of gacaca in Sovu province showed that confidence in the process fell from 51 percent in 2006 to 38 percent in 2008 while 65 percent indicated that they had confidence in gacca, rising to 67 percent in 2008 (Rettig 2008, 37). These findings are similar to Clark's data, which indicate that support for gacaca is generally strong, but that participation has fluctuated based on security concerns, economic need and on interest in specific aspects of individual cases (Clark 2010, 148). By contrast, Gibson's data shows a steady support for the work of the TRC, even though there is evidence of anger and disappointment in the lack of reparations made by South Africa's government (Gibson 2002, 2005). These

findings are similar to our analysis of procedural justice criteria for these two cases, finding some support for the argument that higher levels of procedural justice—defined either formally or locally—corresponds to others' findings of more support for the transitional justice mechanism in question. Gibson's findings of higher support for the work of the HRVC than the AC correlates with our findings that the HRVC paid more heed to the procedural justice needs of victims than did the AC, which focused its procedures more on the perpetrators. Likewise, Rettig's findings of initial high levels of support for gacaca that later fell correspond to our analysis that shows that while some attention was paid to procedural justice criteria at the local level, this was undermined by decisions at the national level which undercut gacaca's perceived neutrality and independence from the political process (Rettig 2008, 40).

Turning in more detail to the TRC, we note a series of processes that have an interesting mix of success in terms of procedural justice as viewed both formally and locally. The HRVC seems to have had the most inventive use of local conceptions of procedural justice through its use of the ubuntu worldview to characterize both its approach to its witnesses and position on the role of reconciliation (cf Coertze 2001; Krog 2008b, 2008a; Marx 2002). In doing so, it fulfilled an informal conception of the criteria for voice and participation for those who testified, as well as trustworthiness, dignity and respect. By contrast the AC's reliance upon a more formal conception of procedural justice may have been wise from a legal perspective, but when viewed through an informal, ubuntu-based, conception of procedural justice, it left many in South Africa with a sense that the amnesty process was unfair to victims (Gibson 2002, 2005). This sense of unfairness may be best characterized by Krog, who argued that it was not

the failure of retributive justice that created anger at the amnesty process, but the failure of those who were granted amnesty to abide by the tenets of ubuntu, washing their hands of the forgiveness that they had received and not acknowledging their interconnectedness with the victims that angered many South Africans (Krog 2008a, 218-219). Despite this, the AC did largely fulfill formal criteria for neutrality of the forum and, despite problems of access, opportunity for voice. The only clear indicator of failure for the TRC is the failure to date of the RRC to provide what is viewed as adequate levels of restitution for those who suffered under Apartheid. However, the discontent that this has generated might be more directed at the Parliament than the TRC as a whole—because in the end it was the Parliament's decision to alter the RRC's recommendations.

As with the TRC, Rwanda's gacaca courts do well in meeting some aspects of procedural justice criteria and poorly in others. When examined through an informal procedural justice lens, gacaca appears to have higher levels of opportunity for voice and participation, as well as, theoretically, high levels for trustworthiness of the authorities—given that they come from the local region. However, more formal conceptions for trustworthiness, treatment with dignity and respect, and opportunity for voice show that, by Western standards, the lack of legal training for judges, the lack of legal counsel for defendants and the willingness of the gacaca courts to admit hearsay evidence creates problems for the international community. Despite this, gacaca has continued to receive some support, though declining, from Rwandans; indicating that the view of procedural justice adopted by the tribunals resonates at some levels with the population. Unfortunately, both for Rwanda and gacaca, the neutrality of the forum has been compromised both formally and locally by the government's decision not to allow

charges to be brought against RPF or former RPF members, tainting the courts with the perception that they are merely offering victors' justice. The question of how much damage this perception will have on Rwanda's ability to achieve some level of reconciliation is uncertain at this time, but it seems likely that this choice will breed resentment that may taint future communal relations.

We would be remiss if we failed to note that the findings with regards to the use of procedural justice as a measurement of success or failure of specific transitional justice mechanisms must be taken with a few grains of salt. Just as we caution against viewing procedural justice criteria only through the lens of formal processes and Western justice, we should also caution against adopting informal cultural conceptions wholesale. It seems relatively clear from the mixed records in each of our cases that there are those who are relatively satisfied with the work that these institutions have done, and in particular, the manner in which they have done it. But there are also many who disapprove of the restorative nature of the TRC and of gacaca, feeling that their needs for justice have been abrogated and that attempts to achieve reconciliation have only brought more pain (Oppelt 1998; Wilson 2001; Kayigamba 2009). While it is useful to examine procedural justice through multiple lenses along the notion of legal pluralism, it is also useful to highlight where perceptions of procedural justice diverge as well as where they converge.

As a final note, we must pay attention to the fact that this is a preliminary study that has explored a possibility for examining transitional justice mechanisms using well-recognized criteria from the field of procedural justice and incorporating ideas about how these criteria might be viewed in different cultural and contextual settings. In order to test

these propositions more fully it is necessary to do several things. The first of these would be to either conduct field research or a field experiment, or to rely upon much more primary data than was available for this paper. This is needed in order to collect information that is more precise and focused on the criteria of procedural justice rather than having to extract information from multiple sources or to extrapolate from existing materials. The second recommendation is to attempt to study multiple transitional justice mechanisms in a single cultural context as an attempt to minimize the variation that exists between cultural settings.

Overall we believe that this research provides a way to show that not only are there many mechanisms available to implement transitional justice, but there are many methods of measuring that justice; methods which are not limited to formal conceptions of procedure or established methods of punishment. Allowing for this diversity in justice and how we view it only gives more options to those who face the hard questions and the hard choices of how to address the human rights violations of a former regime.

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