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Confronting the Past: Democratic Rhetoric or Socially Necessary?

Abstract

In the current globalized international system, politics, economics, and societal issues are the concern of not only the state but of the world as a whole. It is increasingly apparent that participation in the global community requires states to implement, at minimum, conventional democracy within which individual rights are recognized and protected. Yet for much of the developing world, democratic regimes are partially contested given that many states were historically controlled by non-democratic, often militant regimes that offered security to citizens during times of economic crises.

Keywords

Human rights, Latin America, Globalization, Democracy, Judicial authority, International courts

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Confronting the Past: Democratic Rhetoric or Socially Necessary?

By Rachel Oster

In the current globalized international system, politics, economics, and societal issues are the concern of not only the state but of the world as a whole. It is increasingly apparent that participation in the global community requires states to implement, at minimum, conventional democracy within which individual rights are recognized and protected. Yet for much of the developing world, democratic regimes are partially contested given that many states were historically controlled by non-democratic, often militant regimes that offered security to citizens during times of economic crises. In recent decades, Latin American states have begun transitioning to democracies in order to combat their authoritarian rulers, weak civil societies, and deplorable human rights conditions. The shift to democratic regimes is pressuring states to be more conscious of human rights and is empowering them to prosecute those who obstructed, past and present, the achievement of stability of the state and the human rights of its people. After failed attempts at relinquishing power to international courts, the most current trend is to give judicial authority back to the state where violators and victims can reconcile the past, which in turn will strengthen democracy, stabilize civil society, and enhance global credibility.

Following World War II, states realized the importance of addressing widespread human rights violations on the international level with the support of international organizations (IOs) and nongovernmental organizations (NGOs). For example, the International Criminal Court (ICC) centers its focus on providing unbiased judgment against those who are deemed as perpetrators against society after July 2002, as established by the Rome Statute. The members of the UN assert that any entity, state or individual, that violates human rights by means of genocide, crimes against humanity, and/or war crimes, will be subject to prosecution in the ICC unless involved in proceedings in their respective domestic judicial systems. Yet after the ICC was proposed, the key actors who participated in its creation withdrew due to their fear of being held accountable for abuses by their militaries, governments, and multinational corporations, thus the Court has been largely inactive.

As a result of the lack of support and accountability, limited jurisdiction, and the overarching fear of compromising sovereignty in a globalized world, many governments focus on state-centered judicial approaches toward dealing with human rights violators. Since the ICC is limited to recent violations, more creative approaches have been taken to confront the atrocities of the past in order to improve the future conditions of the state. These methods are used primarily by states with “transitional governments,” those moving from non-democratic regimes toward democracy, and come mainly in the form of truth commissions and human rights trials. The use of truth commissions and trials, what is termed “transitional justice,” grants the state the ability to structure a process of reconciliation in-line with its respective interests. The application and outcome of commissions and trials vary throughout regions because they are being applied to a “wide variety of sociopolitical settings with varying levels of support (international, governmental, and popular), resources and constraints” (Avruch and Vejarano 2002: 37-38). Empirically, Latin America has experienced more recognizable success in democratic transitions and transitional justice than any other region, yet the short-term and long-term effects remain an issue of contention. The inconsistent results are attributed to the incongruent goals of justice, truth, and reconciliation, which

are affected largely by the culture of the state, as well as the marginal efforts of the state at combining its search for justice and truth.

Transitional Latin American states that underwent trials almost always first engaged in truth commissions, and in the majority of cases the two forms of transitional justice together led to an improvement in human rights conditions since by definition “a functioning democracy will...be respectful of human rights” (Hillman, et. al 2002: 2). Truth commissions are a necessary step in the process of punishment since states are generally at odds about what happened in the past. The human rights abusers have created a tense civil environment in which the victims of the past are fearful of recounting their experiences, the “truth,” since many criminal officials either still retain official positions or remain closely connected with today’s governmental and military officials. It is not until a platform of free speech for investigative purpose is established that the victims feel protected and empowered to retell their stories. Once victims communicate the details, judicial action in the form of trials can prevail with a stronger, more detailed account of the violations, and thus charges and punishments can be better decided.

During the initial attempts at carrying out human rights trials, short run results were marginal and the outlook grim. Since in most cases there were threats of military coups, oppressive governmental and military officials remained protected by official amnesty laws, and the goals of justice were geared toward retribution not reconciliation. Most Latin American states have since removed their official amnesty protection laws and gained a societal consensus as to the importance of and the purpose for publishing truth commission reports and punishing past human rights violators. By pursuing the contentious, yet increasingly effective forms of transitional justice, it is proven that with the passage of time, both the perpetrators and the victims are brought together in reconciling the past and aiding in the transition of the state to democracy. Once deeply divided states begin to experience progress and gain strength within their civil societies, thereby directly enhancing their development and credible participation in the global community. Given the observation of an abundance of long run empirical success, especially in Latin America, the rest of the world must continue to work toward further improvements in the human rights justice discourse. Even with improved domestic accountability and enforcement through the use of transitional justice mechanisms, from what was originally observed in the trials of the ICC and other International Tribunals, it is necessary for all participants in the global system to continue with this success and create stronger standards for further protection and enforcement of human rights.

Annotations

“Repressors Still Terrorizing.” 2008. *Latin America Press* (March 27)
<http://latinamericapress.org/articles.asp?item=1&art=5555>.

Annotation: This article discusses the implications arising in the attempt to carry forth human rights trials. In many instances, the witnesses and the human rights violators themselves have been murdered or kidnapped just days before the commencement of their respective trials. This fact is supported with various examples across several South American

nations with the intent to show the ineffectiveness and obstacles occurring during the course of judicial action.

Andreopoulos, George, Zehra F. Kabasakal Arat, and Peter Juviler. 2006. "Introduction." In Non-State Actors in the Human Rights Universe. Edited by G. Andreopoulos, Z. F. Kabasakal Arat and P. Juviler. Bloomfield: Kumarian Press.

Annotation: The real application of the various human rights charters and declarations that have been formed to counter mass violations, prove, according to the authors, that there remains much to be desired concerning this discourse. Given the threat of losing sovereignty, states are afraid to take full action against those who commit violations unless they are deemed "interstate aggressive acts." The authors thus attempt to establish methods for addressing particular issues that arise in international criminal law and give much attention to the behavior of non-state actors (NGOs) in combating widespread abuse.

Autheman, Violaine and Sandra Elena. 2004. "Global Best Practices: Judicial Councils: Lessons Learned from Europe and Latin America." *International Foundation for Election Systems* (April) http://www.ifes.org/publication/cae6b5d089d0b287174df2742875b515/WhitePaper_2_FI_NAL.pdf

Annotation: This is a comprehensive piece regarding the requirements and guidelines for the international prosecution of human rights violations. The issue addresses many literary works concerning the pursuit of trying state officials for criminal charges. This paper terms this issue as "judicial integrity" and elaborates this concept by concentrating on the standards set for those individuals who preside over the trials.

Arat, Zehra F. K. 2006. "Looking Beyond the State but Not Ignoring It: A Framework of Analysis for Non-State Actors and Human Rights." In Non-State Actors in the Human Rights Universe. Edited by G. Andreopoulos, Z. F. Kabasakal Arat and P. Juviler. Bloomfield: Kumarian Press.

Annotation: In an effort to tackle the overarching concern of state sovereignty in the discourse of international criminal law, many recent charters are "statist"-putting the power back in the hands of the state. However, the author opines that the shift back to state-centered policies has caused the protection of human rights to be subjective and ineffective. Yet when the power is in the hands of non-state actors ("NGOs") there is significant consensus declaring that there is a divide in effectiveness in that some NGOs protect against violations, where others indirectly promote additional violations.

Avruch, Kevin and Beatriz Vejarano. 2002. "Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography." *The Online Journal of Peace and Conflict Resolution* 4 (2):37-76.

Annotation: Offering a background on truth commissions, this review essay and annotated bibliography provides an overview of how truth commissions came to be and how successfully they have been in terms of performance and statistical information. The majority of truth commissions are government-lead in transitional regimes, yet vary tremendously given diverse levels of support, resources, limitations, and results. With the inclusion of an annotated bibliography, this paper allows for easy pursuit of more complex information concerning the truth commissions beyond that of what is offered within this introductory piece.

Becker, John D. 2003. "International Crimes, Peace and Human Rights: The Role of the International Criminal Court." *Human Rights & Human Welfare* 3:356.

Annotation: In the years following World War II, there was a large push to create a standing International Criminal Court (ICC) to address the international war crimes that occurred during the course of the war. Becker suggests that the issue of strengthening the ICC is receiving increased attention, and discusses the publication of a series of essays by Dinah Shelton as being a "timely text" for the issue. The book by Shelton focuses on four areas: how past trials have shaped the ICC, concerns of divergent perspectives on how the ICC should be conducted, internal concerns of the ICC such as penalties, and lastly, how to successfully implement the ICC in the international arena.

Bickford, Louis N. 2002. "Preserving Memory: The Past and the Human Rights Movement in Chile." In Democracy and Human Rights in Latin America. Edited by R. S. Hillman, J. A. Peeler and E. Cardozo Da Silva. Westport, CT: Praeger.

Annotation: Bickford uses the Chilean experience to discuss the importance of addressing the past to improve society, in particular the human rights condition, both in the present and the future. The support of truth commissions sprouts from the concept that remembrance is both a healing and a strategic tool with which, the author suggests, will help archive the stories of the victims who historically were without a voice, which in turn promotes justice. However, the author is concerned that there may exist a form of "path-dependency" with this approach and questions why there has been a limited push toward improving social programs in conjunction with promoting truth.

Bigwood, Jeremy and Peter Kornbluh. 2007. "Fujimori On Trial: Declassified Documents." *North American Congress on Latin America* (December 11) www.nacla.org/node/4439.

Annotation: As Fujimori went on trial in Peru for his violation of human rights, the National Security Archive released many documents that linked Fujimori to additional international crimes. The document list includes publications from agencies including the Defense Intelligence Agency, the State Department, and the US Embassy. Some of the other crimes that Fujimori was linked to include the execution of unarmed rebels and the seizure of the home of the Japanese ambassador to Peru in 1997. The fact that Fujimori is linked to other

violations of human rights that he is not facing prosecution for brings the legitimacy and scope of the trials in question.

Black, Elizabeth C. 2004. "Litigation as a Tool for Development: The Environment, Human Rights, and the Case of Texaco in Ecuador." *Journal of Public and International Affairs* 15:142-164.

Annotation: This is a very compelling piece, which focuses on the case of the Texaco Corporation in Ecuador. This corporation is in question for violating environmental and human rights agreements. The important aspect of this piece is that the interest of international human rights groups and trials are expanding from individuals and groups to include transnational corporations. The trend has been that many actors slip through the cracks in the system and are able to avoid prosecution simply from their position in the domestic or international arenas; thus the standards are changing and no group is immune from facing judicial actions for human rights violations.

Chang, Jack. 2008. "Deaths, Kidnappings Plague Argentina's Human-Rights Trials." *McClatchy Washington Bureau* (February 27) www.mcclatchydc.com/homepage/v-print/story/28879.html.

Annotation: In 2005, the Supreme Court of Argentina revoked the right to amnesty for government officials who were historically immune from prosecution for charges of abuse of power, torture, and many violent acts during the repressive dictatorship between 1976 and 1983. This Court decision led to the scheduling of a series of human rights trials that were to take place in Argentina, an act that many thought would bring justice to the country. However, Chang laments that many of these trials have yet to be carried out due to the abundance of murders and kidnappings of key players in the legal actions.

Chauvin, Lucien. 2007. "Fujimori Outburst Sets Tone for Peru Human Rights Trials." *Christian Science Monitor* (December 12) <http://www.csmonitor.com/2007/1212/p07s02-woam.html>.

Annotation: At the beginning of a string of human rights trials that were set to occur against Alberto Fujimori, the former president of Peru, he attempted to discredit the charges being brought against him. He went on a tirade about his success as the head of state, which included the restoration of the nation's economy following a major economic crisis. However, these charades are said to have had little influence on the jurors, since he was being charged with many counts of human rights violations including murder, kidnapping, torture, and false imprisonment. The argument of this article, therefore, becomes that regardless of the stunts pulled by the defendant or others connected to the defendant, the trials remain fair and untainted—contrary to the beliefs of many critics.

Crocker, David A. 1999. "Reckoning with Past Wrongs: A Normative Framework." *Ethics & International Affairs* 13.

Annotation: The approach of this paper focuses on the implications of human rights trials and takes the stance that certain normative frameworks must be implemented in order to counter the imposition of negative consequences. The debate among many scholars remains that the trials of human rights violators in historical cases are hindering the governments from successfully transitioning into democratic regimes. The people of these nations continue to take a split stance on whether it is worth the time and energy to hold these international criminal trials because it is apparent that the success thus far has been marginal.

Equizabal, Cristina. 2000. "Latin America Foreign Policies and Human Rights." In Human Rights and Comparative Foreign Policy: Foundations of Peace. Edited by D. P. Forsythe. Tokyo: United Nations University.

Annotation: Historically in Latin America, human rights were considered rhetoric for the anti-communist movements and were only given weight by those who were fighting for social justice. Many scholars and politicians, however, continue to stand firmly against the fight to prosecute past human rights violators, especially governments, because of the fear of challenging the state's sovereignty. The International Criminal Court places pressure on the state to address violations through trials, yet the accountability of the violators remains an issue of the state and not of the international system. The issue thus remains that there is not enough domestic support for the trials for such judicial action is seen as being simply a Western influence of democracy.

Farbstein, Susan Hannah. 2001. "The Effectiveness of the Exercise of Jurisdiction by International Criminal Court: The Issue of Complementarity." In *European Centre for Minority Issues*. Flensburg, Germany: ECMI.

Annotation: Beginning with the foundations of the International Criminal Court, this paper describes the different historical atrocities that led to the need for prosecuting international criminals. From the perspective of the European Centre for Minority Issues, the author focuses on the protectionist aspect of establishing tribunals across the globe and how the initial standards have evolved over time. A result of the International Criminal Court is the issue of jurisdiction through the Rome Statute, which the author concludes can be addressed only through complementarity.

Feinberg, Ira. 1996. "Fairness to Defendants at the International Criminal Court: Proposals to Strengthen the Draft Statute and its Protection to Defendants' Rights." *Lawyers Committee for Human Rights* (August).

Annotation: After reviewing the draft Rome Statute prepared by the International Law Commission, which was written to outline the procedures and limitations of the International Criminal Court (ICC) should it be established, the Committee offers suggestions and observations concerning the Statute's strength and weakness. The article focuses on several Article provisions, in particular those relating to the rights of suspects and defendants brought before the ICC. The Statute focuses on rights of suspects and defendants in the following manner: procedures for a trial in absentia, indictment chambers,

provisional arrests, pre-trial discovery, public trial, and conviction by a majority vote, and appeals by the prosecutor. The committee remains a proponent for the ICC and supports the suggested changes in the outlined issues of the Statute in order to finally gain international support for a standing tribunal.

Friends of the Earth Europe. 2008. "EU and Business on Trial for Crimes in Latin America." www.corporatejustice.org/spip.php?article236.

Annotation: In addition to individuals and states, companies operating in the Latin American region are now also being prosecuted for human rights violations. The trials of European companies are the focus of this article, in that not only are the traditional players being subjected to judicial action, but multinational corporations (MNCs) are facing similar repercussions to counter a variety of violations that are occurring in the region. The crimes of the companies include the violation of indigenous rights, poor labor conditions, and in general a disregard of welfare of the citizen laborers. This article represents the movement toward establishing an international legal standard and enhancing the accountability of all actors, governments, and corporations.

Garrett, Stephen A. 2000. "Models of Transitional Justice: A Comparative Analysis." International Studies Association-Conference Paper. Los Angeles, CA.

Annotation: The topic of discussion in this conference paper is the varying models for bringing about "transitional justice." This very theoretical piece offers four models that are all said to bring about justice for human rights violations, but which vary in their application, since each model references a historical case. The models include a broad spectrum of approaches ranging from situations in which the government avoids prosecution of past violations, to the full prosecution of all violators.

Hafner-Burton, Emilie M., and James Ron. 2007. "Human Rights Institutions: Rhetoric and Efficacy." *Journal of Peace Research* 44 (4):379-383.

Annotation: Hafner-Burton and Ron talk about the problems surrounding the study of human rights in terms of policy and legal action. There exist diverging views regarding whether it is beneficial to continue the push toward putting human rights violators on trial in hope to deter future abuse. Although the authors express the various stances that change amongst states and researchers, they fail to offer conclusive remarks about whether the intended purpose is being achieved.

Healey, Sharon. 2000. "Searching for Justice in an Unjust War." *Human Rights & Human Welfare* 2 (2):23-20.

Annotation: The global support for introducing human rights trials and truth commissions spurns from the belief that by prosecuting past violations, future tortures, kidnappings, and

murders will be deterred in the time of war or civil unrest. Healey presents the question of “must there be justice in order to realize peace, or are there times when we must swallow injustice in the name of peace?” With consideration of two publications surrounding this issue, there is an attempt to conclude that trials alone will not suffice. In conjunction with political will, the platform will be created to air the truth and endorse accountability.

Hillman, Richard S., John A. Peeler, and Elsa Cardozo Da Silva. 2002. “Introduction.” In Democracy and Human Rights in Latin America. Edited by R. S. Hillman, J. A. Peeler and E. Cardozo Da Silva. Westport, CT: Praeger.

Annotation: In asserting that there exist missing principles that are hindering the institution of democracy in Latin America, the authors link the absence of these principles with the inconsistent human rights records that remain in the region. The authors state that “electoral procedure, for example, [does] not necessarily produce substantive protection of human rights when [it is] designed in practice to serve the interest of an elite,” suggesting that the form of democracy introduced in the region is not pure and is in fact a wavering mix of democratic and authoritarian ideals. Their opinion is further enforced by the argument that the promotion of democracy world-wide has been limited to protecting economic and security alliances, and that with the deteriorating public services and infrastructure, weak economies and corrupt politics, the full implementation of democratization will not ensue, thus leaving human rights violation undeterred.

Human Rights Watch. “Human Rights and Democracy in Latin America and the Caribbean.” 1999. Prepared for “Summit of the Heads of State and Government of the European Union, Latin America and the Caribbean.” Rio de Janeiro: Human Rights Watch.
<http://www.hrw.org/backgrounder/americas/back0624.htm>

Annotation: In June 1999, Human Rights Watch held a conference for the Summit of the Heads of State and the Government of the European Union, Latin America and the Caribbean to discuss the current state of human rights in the region. This conference paper shows that there are still a variety of conflicts that need to be resolved ranging from leftist guerillas in Colombia to the attacks against freedom of expression in Chile. Beginning by outlining these issues, the paper then offers solutions for democratic institution building and the establishment of truth commissions to eradicate these problems.

Jochnik, Chris. 1999. “Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights.” *Human Rights Quarterly* 21 (56):56-79.

Annotation: After World War II, human rights discourse was centralized around the promotion of democracy in all regions of the world in order to combat widespread violations. The author, however, describes the implications that arise if the scope is too narrowly focused on democratic regimes, and how several large issues thereby are overlooked. Many non-state actors are continuing to engage in human rights violations, and are immune from and disregarded in protection efforts of the state.

Kim, Hunjoon, and Kathryn Sikkink. "Do Human Rights Trials Make A Difference?" Chicago: Law School at the University of Chicago. <https://www.law.uchicago.edu/files/intlaw-sikkink.pdf>

Annotation: Much debate ensues over the effectiveness of hosting human rights trials to enhance accountability for state officials' abuse of power and criminal violations. A statistical study shows that the use of human rights trials in transitional states, those states moving toward democracy, is in fact deterring future human rights violations from occurring both domestically and internationally.

Knoops, Geert-Jan Alexander. 2003. An Introduction to the Law of International Criminal Tribunals: A Comparative Study. Ardsley, NY: Transnational Publishers.

Annotation: With a specialization in international criminal law, the author displays his knowledge of the subject to review the current push toward establishing both functioning International Criminal Court and International Criminal Tribunals. After World War II, the use of human rights trials was marginal. It was not until the conflicts and violations in Yugoslavia and Rwanda that the international system demonstrated its support for prosecuting the criminals in charge. The focus of this book is to look deeper into international criminal tribunals, namely in the case of Yugoslavia and Rwanda, and addresses the principles that govern the tribunals and further focuses on the wrongfully accused, a topic usually avoided by many experts in this field.

Lawyers Committee for Human Rights. 1998. "Establishing an International Criminal Court: Major Unresolved Issues in the Draft Statute." *International Criminal Court Briefing Series 1* (1).

Annotation: From the perspective of an organization that supports the establishment of a standing International Criminal Court (ICC), the Lawyers Committee for Human Rights believes that by imposing an international tribunal there will be a safety net for the failed national judicial processes. In order to enhance its success, the Committee proposes that the scope of the ICC's jurisdiction will be limited to those crimes of genocide, war crimes, and crimes against humanity. Further, the organization focuses on the need for the Court's independence in order to gain support, and so that it does not appear to be a Western process.

Linz, Juan Jose, and Alfred C. Stepan. 1996. "From an Impossible to a Possible Democratic Game: Argentina." In Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe. Edited by Juan Jose Linz and Alfred C. Stepan. Baltimore: John Hopkins University Press.

Annotation: The 1976-1983 presence of a military regime in Argentina is described as being an "anarchic reign of terror" in which "thirty-two times more people disappeared in Argentina than in Brazil" (Brazil also is plagued by a past full of human rights violations and

repression). The “collapse” of the military regime was the result of the defeat of the military in the Malvinas, which brings implication to the state when trying to embrace democracy today. Due to the regime’s hierarchical nature, Linz and Stepan suggest that the military rule did not in fact collapse, but remained in power after the war in which they “were in a position to gravely complicate the task of consolidating democracy.” Thus, the authors conclude that the use of trials to address human rights violations in Argentina almost led to the breakdown of democracy because of the lack of a stable political backing.

May, Rachel A. 2005. “The Social and Political Aftermath of Terror: A Consideration of Human Rights, the Judiciary, and Dealing with the Past.” In (Un)civil Societies: Human Rights and Democratic Transitions in Eastern Europe and Latin America. Edited by R. A. May and A. K. Milton. Lanham, MD: Lexington Books.

Annotation: Since the Argentine trials on human rights in the early 1980s, the application of these trials for reconciliation and democratization has been subject for debate. In transitioning democracies that are historically considered to be “post-terrorist” societies (i.e. Argentina), weak economic conditions have forced the citizens to become suspicious of the political and civil activities. Thus the process of reconciliation is in question for its conflicting nature with democratization. With the failures of human rights trials in the 80s, the fear of military retribution remains large, silencing many of the victims and prohibiting justice.

McCorquodale, Robert, and Richard Fairbrother. 1999. “Globalization and Human Rights.” *Human Rights Quarterly* 21 (3):735-766.

Annotation: As globalization becomes increasingly prevalent, many corporations have expanded their business efforts into states across the world as a way of taking advantage of the global system. McCorquodale and Fairbrother center their analysis on this concept and look deeper into those that are deemed to be the “losers” in this process. The losers, whom the authors focus on, are those whose rights are being violated in the pursuit of economic gains.

Mendez, Juan E. 1996. “Accountability for Past Abuses.” *Human Rights Quarterly* 19 (2).

Annotation: Mendez illustrates the debate that ensues of the issue of international judicial actions against past human rights violations. The question of whether the international system has a place in the process remains unforgiving as a result of the democratic belief that the government knows what is best for its state. However, in order to gain full success during this process, the international community needs to cooperate with the state to establish guidelines for accountability that formulate an international standard to which all global citizens should be required to adhere.

———. 2000. “International Human Rights Law, International Humanitarian Law, and International Criminal Law and Procedure: New Relationships.” In International Crimes,

Peace, and Human Rights: The Role of the International Criminal Court. Edited by D. Shelton. Ardsley, NY: Transnational Publishers, Inc.

Annotation: Focusing on the issue of impunity and the convergence of the International Humanitarian and Human Rights Laws, Mendez addresses the common obstacles of immunity and cooperation of state officials as being the limits to persecution. The Rome Statute that gave rise to the International Criminal Court (ICC) was approved *en bloc* by Latin American states, yet with the Pinochet case, Chile fought the ICC's jurisdiction. Thus the author concludes that by nature each law and entity of the court appears to be beneficial for repercussion for the past. He also persists that the use of official immunity must be stipulated by the provision that immunity be awarded unless the official partakes in genocide, war crimes, or crimes against humanity.

Navia, Patricio. 2003. "The Trials of Pinochet." *Foreign Policy* (May/June).

Annotation: The difficulties of trying state officials for past human rights violations is largely inefficient, leading both parties to feel defeated by the outcome. This particular paper focuses on the case of former General Augusto Pinochet of Chile and his release from his human rights trial for medical reasons. With Pinochet free from punishment, the Chilean people are divided as to whether they are satisfied with the steps toward justice that were taken against Pinochet in hope of correcting past wrongs and straightening out the future of Chilean human rights.

Norden, Deborah L. 1996. Evolution of Military Rebellion: Military Rebellion in Argentina: Between Coups and Consolidations. Lincoln: University of Nebraska.

Annotation: In order to understand the status of human rights trials in Argentina today, it is necessary to analyze the historical events that have directly and indirectly lead to the trials failures. Argentina has a divided civil society, some of which are embracing the introduction of democracy and others who remain proponents of the military regime that have held long-standing power through fear and complete state control. As a result of the split, there exists an instability and underground organization that imposed conflicts and unrest throughout the state and who are believed to forever hinder the processes of democracy and justice.

Pejic, Jelena. 1995. "What is a Fair Trial? A Basic Guide to Legal Standards and Practice." Edited by G. Black. New York: Lawyers Committee for Human Rights.
http://www.humanrightsfirst.org/pubs/descriptions/fair_trial.pdf

Annotation: The Lawyers Committee for Human Rights compiles guidelines for determining the correct and justifiable process for international human rights trials. The paper provides background information of basic fair trial criteria from the rights of the individual at all stages of the trial: pre-trial, hearing, and post-trial. Outside of outlining the basic rights of the individual, the Lawyers Committee also discusses the manner in which to deal with the external observer and media rights surrounding the proceedings.

Roehrig, Terry. 1998. "Putting the Military on Trial: The Consolidation of Democracy in South Korea and Argentina." International Studies Association-Conference Paper.

Annotation: This paper focuses on two specific case studies where military officials were put on trial for war crimes ranging from murders to kidnappings. The nations that are the focus of this paper are South Korea and Argentina, with Argentina being the best example of the use of human rights trials to address the corruption and torturous situation following many decades of military regimes. Argentina has attempted to carry forth a series of trials after the release of official amnesty. However, it has been largely unsuccessful in prosecuting these criminals for a variety of reasons. Thus, the conclusion of this paper is that, with cases of transitional justice, there are many tradeoffs that must be considered, making these trials an issue of contention.

Schiff, Ben. 1998. "War Crimes and Truth Commissions: Constructing International Morality and Constraining the State." International Studies Association-Conference Paper.

Annotation: This paper explores the use of truth commissions in response to human rights violations, both in the domestic and international sphere. As many states are beginning to use trials to address criminal charges of governmental officials throughout Latin America, they are most prominently being held in states with transitional governments. The argument suggests that the international norm consensus following World War II in combating war crimes cannot successfully be imposed internationally, and that many efforts would much rather be avoided by the government in order to better stabilize and introduce democracy in the state.

Sethi, Manpreet. 1999. "The Pinochet Case: Implications for Chile, Latin America and the World." *Strategic Analysis* XXII (11).

Annotation: A prominent figure in the discussion of human rights trials is Augusto Pinochet of Chile, who allegedly violated human rights of Chilean and foreign citizens. Although Pinochet is said by some to deserve prosecution for past offenses, others believe that all the judicial actions really accomplish is to reopen old wounds of a historical past that many prefer to forget. Despite the fact that torture, murder, and kidnapping in Chile characterized the military dictatorship that once controlled the nation, the perspective of this paper is that trials in fact hinder progression of transitional governments as many Latin American nations are moving toward the institution of democratic regimes.

Sikkink, Kathryn. 2008. "From State Responsibility to Individual Criminal Accountability: A New Regulatory Model for Core Human Rights Violations." Annual Meeting of the American Political Science Association-Conference Paper.

Annotation: Traditionally, as the authors suggest, dealing with human rights violations have been the responsibility of the state, which makes legal accountability and enforcement much more challenging. Today, however, this approach is changing and the criminal acts occurring within a state are finally becoming reprehensible under international law by prosecuting the individuals taking part in the violations. This trend presents a new regulatory model for human rights violations and describes different forms of trials and regulations that are being offered as a solution to address human rights.

Sikkink, Kathryn and Carrie Booth Walling. 2007. "The Impact of Human Rights Trials in Latin America." *Journal of Peace Research* 44 (4):427-445.

Annotation: The impacts of truth commissions and human rights trials until recently were scrutinized as creating obstacles to the institution of democracy. Sikkink and Walling successfully gather data to provide empirical support against these claims. In fact, they conclude that the introduction and rapid growth of truth commissions and trials in transitional societies are limiting the number of violations and are aiding the nations in their steps toward democracy.

Slaughter, Annie-Marie, Kenneth Roth, John Bolton, and Ruth Wedgwood. 1999. "Toward an International Criminal Court?" *The Council on Foreign Relations*.

Annotation: There exists a degree of consensus amongst scholars that the structure of the International Criminal Court needs improvement to be fully successful in the international arena. Although there are advocates for and against the Court for various reasons, the issue of enforcement remains overarching.

Smith, Charles Anthony. 1999. "The Primacy of Politics: Justice, Power, and War Crime Trials." *Online Journal for Peace and Conflict Resolution* (August).

Annotation: Smith focuses his discussion on the debate surrounding whether a standing international human rights tribunal should exist to aid in prosecuting human rights violators in a speedy and efficient manner, or whether ad hoc tribunals are a more fitting solution to the problem. Through the use of several case studies in different areas of the world, statistical analysis shows that a standing tribunal is a representation of cultural empiricism that is simply trying to promote democratic, Western ideals. By allowing states to setup ad hoc tribunals to suit their judicial needs, Smith concludes the effort will be more effective, but only if conducted combined with the implementation of a stable political regime.

Tepperman, Jonathon. 2002. "Truth and Consequences." *Foreign Affairs* (March/April).

Annotation: With many nations across the world trying to gain the support of the West, newly elected governments in historically communist or militaristic states begin by transitioning their regimes into democracies. One of the main ways in which the new leaders

are introducing democracy to the state is by establishing truth commissions or tribunals to face past human rights violations. Although this attempt appears to be what the state requires on the surface, the issue remains that there are fundamental issues when exposing the truth for which the author suggests can be countered through learning from past experiences, and by focusing on what the commissions are truly able to accomplish through its limited scope instead of forcing unrealistic expectations.

Zalaquett, Jose. 2002. "The Pinochet Case: International and Domestic Repercussions." *The Aspen Institute*.

Annotation: This working paper discusses the steps that have been made in the process of attaining international justice through the European prosecution against the Chilean dictator Augusto Pinochet. After World War II there was an enormous amount of fundamental progress being made through law-making and the establishment of the International Criminal Court. As time passed the international tribunals have made advancements, some of which are marginal, yet in terms of the jurisdiction and enforcement, violators of human rights are currently facing the repercussions of their actions both at the domestic and even at the international level when the effects of their actions overstretch domestic jurisdiction.