

# TRANSITIONAL JUSTICE AFTER ECONOMIC CRISIS

Ragnar Hjálmarsson

Dissertation submitted to the Hertie School  
in partial fulfilment of the requirements for the degree of  
Doctor of Philosophy (PhD)  
in the  
Doctoral Programme in Governance  
Berlin, 2021



**FIRST ADVISOR**

Prof. Dr. Dr. h.c. Christian Joerges

Professor Emeritus of Law and Society at the Hertie School

**SECOND ADVISOR**

Prof. Kieran McEvoy PhD

Professor of Law and Transitional Justice at Queens University Belfast

**THIRD ADVISOR**

Dr. Iosif Kovras PhD

Associate Professor of Political Science at University of Cyprus



## SUMMARY

This dissertation is about how established democracies can respond to economic crises. At its center is the dilemma that political elites, and societies as a whole, face after such an event –whether to focus exclusively on forward-looking policies that secure a recovery or whether to also address the underlying causes of the crisis, learning the lessons of the past but also weathering the divisiveness and recrimination this exercise is likely to elicit.

To engage with this dilemma, this research takes inspiration from the field of transitional justice on how societies can deal with the past, and learn from it. Of special interest are the mechanisms of transitional justice. Truth commissions most prominently, but also prosecutions, reparations, and constitutional reforms. The analysis moves from a cross-country comparison of truth commissions deployed in Iceland, Ireland, and Greece after the Great Recession, to a case study of a comprehensive range of mechanisms deployed in Iceland, to an impact assessment of the most effective of the three truth commission.

I will argue that the transitional justice framework brings helpful and practical insights when applied to the study of economic crises in established democracies. It challenges the conventional wisdom that ‘business as usual’ will prevail after an economic crisis; it also yields principles for designing mechanisms that promote learning from the past and building-in better practices in the future.



*fyrir Hjálmar og Rósu*





## ACKNOWLEDGEMENTS

To write a dissertation about learning from a crisis is a humbling and comical experience when the writing process can be one of stumbling from one crisis to another. If it had not been for my friends in academia, my mentors, and my close friends and family then I would never have been able to find my way, finalize this work, and learn the lessons I needed to learn. And now I have an opportunity to thank them for sticking with me, tolerating me when I was impossible, and showing me – each in their own way – how I could bring this project forward.

The enthusiasm that my Doktorvater Christian Joerges showed in my work was infectious and instrumental. I thank him for the opportunity to carry out this study and I thank him for his confidence in the value of my inquiry. My second supervisor, Kieran McEvoy, showed me how fieldwork can be an artform and he gave me the confidence to call a duck a duck, and for that I thank him. My third supervisor, Iosif Kovras, has been at my side since the idea was first articulated. His knowledge of the subject was deeply beneficial to me, and his comments and reviews of individual chapters on numerous occasions did, to no small degree, shape this work. I also thank him for the opportunities he gave me to present earlier versions of these chapters at conferences in London and Boston, and I look forward to continuing our work together.

The study would not have emerged in the way it did without the assistance of my dear friend and mentor Franek Rozwadowski. His surgical analysis of the text and brutally helpful edits made this work infinitely better and sharpened its focus. I also thank him for giving me the opportunity to work by his side when everything had gone wrong in my country, and for giving me such a standpoint from which to see an economic crisis unfold. I am also indebted to Andy Carl, who taught me valuable lessons about peace, processes, and how people should be treated. This dissertation is the result of the opportunities that Franek and Andy gave me. I would also like to thank the late

Dominique Jacquin-Berdal for her warmth when I was her student and for teaching me that the periphery gives us the best questions to interrogate the truths of the center.

The friendships I have developed here in Berlin have made life vibrant, and they have carried me forward when the seas were rough. Erik Herkrath showed me solidarity and embraced me with his unique empathy. Julie Favreau listened like no other and showed me new horizons. Nik Kosmas got me into shape, physically and mentally. After twenty five years of friendship, Darri Lorenzen, had the most crushingly useful bullshit detector. And Kristín Gunnarsdóttir von Kistowski gave me the unconditional support that only a chosen family member can give. I would also like to express my gratitude to Claudia Dzaack whose care and advice was the most valuable of anchors, and to Christiane Kasack who gave me the tools that I needed and which will come of good use at future destinations.

This work would not have been possible if it had not been for the trust, advice and support of my family. I thank my mother and Friðrik for a political upbringing that nurtured a willingness to understand. I also thank my mother for clearing the path by doing, and becoming the woman she is. I thank my father for his thoughtful support and for how he has nurtured my curiosity. And when the clouds seemed grey beyond compare, Derya Issever arrived with buckets full of sunshine. Her support, patience, and love brought me over the line. As always, I think of my children Hjalmar and Rósa, and I dedicate this work to them in acknowledgment of my deep debt to them as both teachers and friends. *Mikið er pabbi heppinn.*

## TABLE OF CONTENTS

<b>LIST OF TABLES AND GRAPHS .....</b>	<b>1</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>2</b>
<b>INTRODUCTION .....</b>	<b>3</b>
<b>CHAPTER 1. TRUTH COMMISSIONS AFTER ECONOMIC CRISES:</b>	
<b>POLITICAL LEARNING OR BLAME GAME?.....</b>	<b>9</b>
1.1 TCS, TRANSITIONAL JUSTICE AND ECONOMIC CRISES .....	10
1.2 THE ‘BLIND SPOT’ OF POLITICAL LEARNING .....	13
1.3 PUZZLES AND RESEARCH DESIGN .....	16
1.4 ALTERNATIVE EXPLANATIONS.....	17
1.5 INSTITUTIONAL VS. INSTRUMENTAL LEARNING .....	18
1.6 INSTITUTIONAL LEARNING.....	21
<i>Iceland’s Special Investigation Commission .....</i>	<i>21</i>
1.7 INSTRUMENTAL LEARNING.....	25
<i>Greece’s Debt Audit Committee .....</i>	<i>25</i>
<i>Ireland’s Banking Inquiry (BI) Commission .....</i>	<i>29</i>
1.8 CONCLUSION: TCS AND OMISSIONS .....	32
<b>CHAPTER 2. TRANSITIONAL JUSTICE AFTER ECONOMIC CRISIS:</b>	
<b>INNOVATION IN ISOLATION, THE CASE OF ICELAND .....</b>	<b>36</b>
2.1 APPLYING TRANSITIONAL JUSTICE TO ECONOMIC CRISIS .....	37
2.1.1 <i>Convergence and divergence.....</i>	<i>38</i>
2.1.2 <i>Innovation in isolation.....</i>	<i>41</i>
2.2 QUESTIONS AND RESEARCH DESIGN .....	43
2.3 ADOPTION AFTER A CRITICAL JUNCTURE .....	47
2.3.1 <i>The nature of the crisis: ‘Put it in a box so we could focus on surviving’ .....</i>	<i>52</i>
2.3.2 <i>Ground conditions: ‘Politics managed to come together’ &amp; ‘became a mess’.....</i>	<i>54</i>
2.3.3 <i>Innovation in isolation: ‘there were no messages’ &amp; ‘there were few restraints’..</i>	<i>58</i>
2.3.4 <i>Act and act fast.....</i>	<i>60</i>

2.4 MECHANISMS IN MOTION .....	61
2.4.1 <i>The Truth Commission</i> .....	62
2.4.2 <i>Prosecutions and trials</i> .....	70
2.4.3 <i>Reparations</i> .....	78
2.4.4 <i>Constitutional reform</i> .....	82
2.5 CONCLUSION: TRANSITIONAL JUSTICE AFTER ECONOMIC CRISIS .....	88
<b>CHAPTER 3. TRUTH COMMISSIONS AFTER ECONOMIC CRISES: THE IMPACT OF INSTITUTIONAL LEARNING .....</b>	<b>93</b>
3.1 TRUTH COMMISSIONS.....	94
3.2 POLITICAL LEARNING .....	97
3.3 APPROACHES TO ASSESSING TCS IMPACT .....	99
3.4 RESEARCH DESIGN: THE IMPACT OF INSTITUTIONAL LEARNING .....	101
3.5 MECHANISM IN MOTION .....	104
3.5.1 <i>Decision to adopt</i> .....	105
3.5.2 <i>Mandate</i> .....	107
3.5.3 <i>Final Report</i> .....	111
3.5.4 <i>Institutional learning as impact</i> .....	116
3.6 IMPACT .....	118
3.6.1 <i>Impact on the financial system</i> .....	118
3.6.2 <i>Impact on the political system</i> .....	122
3.6.3 <i>Impact on the space available for populist politics</i> .....	125
3.7 CONCLUSION.....	128
<b>CONCLUDING DISCUSSION .....</b>	<b>131</b>
<b>BIBLIOGRAPHY.....</b>	<b>141</b>
<b>APPENDIX A: LIST OF INTERVIEWS .....</b>	<b>155</b>
<b>APPENDIX B: LIST OF PRE-PUBLICATIONS .....</b>	<b>157</b>
<b>ABOUT THE AUTHOR:.....</b>	<b>157</b>

## LIST OF TABLES AND GRAPHS

Table 1	Composition of Truth Commissions in Iceland, Greece and Ireland	p. 12
Table 2	Depth of Crisis (Peak to Trough) and Number of Years in Recession.	p. 18
Table 3	Two Types of Learning after Crisis.	p. 19
Table 4	Average Pre-Crisis Levels of Trust in Institutions (Judiciary, Parliament and Government) and Public Transparency (perception of Corruption in Judiciary and Parliament).	p. 20
Table 5	Types of Learning and Truth Commissions.	p. 21
Table 6	Adoption of Mechanisms in Iceland.	p. 51
Table 7	Confidence in Parliament, Civil Service, and the Justice System in Iceland from a Comparative Perspective.	p. 55
Tables 8 & 9	Two Types of Learning after Crisis.	p. 56 p. 97
Table 10	Truth Commissions: Significant Observable Features.	p. 98
Graph 1	Growth of the assets of Iceland's three major banks (EUR billions).	p. 119
Graph 2	Cross-ownership in the Icelandic financial system pre- crisis.	p. 120

## LIST OF ABBREVIATIONS

ANEL	Independent Greeks –National Patriotic Alliance
BI	Ireland’s Parliamentary Banking Inquiry
CoI	Commissions of Inquiry
ECB	European Central Bank
ECHR	European Court of Human Rights
EEA	European Economic Area
EU	European Union
ESRI	Economic and Social Research Institute
FF	Fianna Fáil
FG	Fine Gael
FSA	Financial Services Authority
IP	Independence Party
ICTJ	International Center for Transitional Justice
IMF	International Monetary Fund
LGM	Left-Green Movement
ND	New Democracy
OSP	Office of the Special Prosecutor
PASOK	The Panhellenic Socialist Movement
SYRIZA	The Coalition of the Radical Left – Progressive Alliance
TC	Truth Commission
SIC	Iceland’s Special Investigation Committee
WGE	Working Group on Ethics

## INTRODUCTION

This dissertation is about how an established democracy can respond to an economic crisis. It takes inspiration from more than three decades of practice and theorizing, in the field of transitional justice, on how post-conflict societies can deal with their past and strengthen their democratic institutions. Of special interest to the present work are the institutional mechanisms of transitional justice. Truth commissions most prominently, but also prosecutions, reparations, and constitutional reform.

These are the mechanisms that emerging democracies are urged to deploy in seeking to deal with histories of gross political and human rights violations and to navigate from conflict to peace and from authoritarianism to democracy. They are strategies that societies can use to respond to a loss of legitimacy and public trust by truth-seeking, by enforcing accountability, by providing reparations as recognition of the harm caused, by promoting reconciliation and by strengthening the institutions for democratic governance.

Transitional justice has made a valuable contribution to the health of democracies and to good governance. Over the thirty years since the concept was first advanced, post-dictatorial societies of South America, post-communist societies of Eastern Europe and post-conflict states of the post-Cold War order have attempted to embrace it as a path that ‘bridges a violent or repressive past and a peaceful, democratic future’ (Nagy, 2008: 289).

Economic crises in established democracies are different from violent conflicts, and their fallout pales in comparison with the violence, political oppression, and abuse that have been the concern of the transitional justice framework. That said, economic crises, like violent conflicts, are ‘critical junctures’ that challenge the institutional architecture of established democratic states and are followed by a period of transition. During the transition, political elites in established democracies face the same questions as political elites in post-conflict societies: why did this happen, who

is accountable, who should be compensated, and what reforms are needed? Moreover, they face the same dilemma: is it enough to implement forward-looking policies that secure a recovery or do they also need to deal with the past, eliciting the divisiveness and political toxins associated with confronting issues of accountability.

All too often the energy and civil activity unleashed by economic crises dissipates as post crisis normality sets in and these questions fade away without being confronted. The aftermath of the Great Recession, with its dominant narratives of delegitimised political landscapes and consequent populist backlash, speaks to the cost of not engaging effectively with these questions. Against this background, the transitional justice framework offers institutional strategies for the study of economic crises, and responses to them, mechanisms that can prolong the initial moment of reckoning and give time for these questions to shape the transition and a new political dispensation. What guides and motivates the present dissertation is the potential to contribute to knowledge that can challenge the conventional wisdom that ‘business as usual’ will prevail after an economic crisis.

By applying the transitional justice framework to how established democracies respond to economic crises, this dissertation is using a well-tested approach in a novel way. Well-tested in that the analytical framework is established in the academic literature and has been honed through practice. And novel in the sense that it is used in a new context.

An early exploration of transitional justice practices after an economic crisis was conducted by Valur Ingimundarson (2010; 2016) who has written on the politics of justice and truth in the wake of Iceland’s 2008 economic crash. More wide-ranging work has taken place in the context of the Economic and Social Research Council-funded research project ‘Accountability after Economic Crisis’ led by Iosif Kovras, (and which I had the good fortune to participate in). The project has developed a database on political, legal, criminal, and regulatory policies in the six crisis-hit European states (Iceland, Ireland, Portugal, Spain, Greece and Cyprus) that this



dissertation draws on, and issued policy reports on how these states sought to learn from the past. It has given rise to a number of journal articles: Kovras and Pagliari (2020) explore the different paths taken by Iceland and Cyprus in regard to the prosecutions of bankers; Hillard, Kovras and Loizides (2020) ask how the transitional justice framework can enhance discourses on ‘accountability’ in established democratic states; finally Kovras, Hjalmarsson & McDaid (2018) examine how the different pathways taken by truth commissions in Iceland, Ireland, and Greece led to the emergence of two different types of political learning, *institutional*- and *instrumental*, which shaped the effectiveness of truth commissions.

At present the academic literature applying the transitional justice framework to economic crises in established democratic states consists of these articles; it will shortly be augmented by studies still in progress under the same project. Consequently, this dissertation can be seen as a contribution to a new approach, one that seeks to tap into the conceptual and analytical richness of the established framework of transitional justice, and at the same time to expand our assumptions about *whom* it applies to (established democratic states) and for *what* end it is invoked (responding to economic crises).

Three stand-alone articles form the basis for the three main chapters of this dissertation. They engage with its overarching research aim (broadening the field of application of the transitional justice approach) while moving in stages from a broad perspective to a narrower one. The focus moves from a comparative analysis of truth commissions deployed in three countries (the first chapter); to a case study of the range of mechanisms deployed in a single country (the second chapter), to an impact assessment of a single truth commission in (the third chapter). The aim of this step-wise approach is to use the insights from each level of analysis to make a broad and practical contribution to a new approach. The comparative analysis in the first chapter helps orient the research project. It does so by identifying, through a method of difference, the variations in timing and outcomes of similar mechanisms deployed in different countries, and by advancing a theoretical framework to explain these

variations. The second chapter builds on the first. It uses the theoretical framework developed there to evaluate the adoption and implementation of five different mechanisms at the state level and to explain variations in their effectiveness. And the third chapter uses an impact assessment approach to analyse and assess the design of a single mechanism and weigh the merits of its deployment. These three chapters will now be summarized in more detail.

The first chapter, ‘Truth Commissions after Economic Crises: Political Learning or Blame Game?’ (co-authored with Iosif Kovras and Shaun McDaid), evaluates Iceland’s, Ireland’s and Greece’s deployment of truth commissions. It asks two overlapping questions: *why did political elites set up truth commissions after an economic crisis?* And, *why did the elites in some countries attempt to use the commissions for political gain, while elites in other countries gave priority to restoring trust in state institutions?* Drawing on the comparison between the two groups we identify two types of political learning displayed by political elites related to the establishment of truth commissions. The first, *institutional learning*, occurs in countries where rebuilding trust after a major economic crisis is important for political elites. In these countries levels of public transparency and trust in institutions were already high before the crisis, and a truth commission appeared early on. The second type of learning, *instrumental learning*, is found in countries where newly elected governments had no direct involvement with the arrival or immediate (mis)management of the crisis. Here, truth commissions were established only when they were seen as expedient, usually before or after critical political events such as elections or bailouts.

The second chapter, ‘Transitional Justice after Economic Crisis: Innovation in Isolation, the Case of Iceland’, narrows the focus to Iceland and specifically its adoption and implementation of five different transitional justice mechanisms. The chapter asks three questions: *Why did political elites adopt such a comprehensive range of mechanisms? How did these resemble or differ from paradigmatic transitional justice mechanisms?* And, *what lessons do the country’s experiences hold for the future?* Explanations for adoption are located in the nature of the crisis, the absence of external and

domestic restraints, and the development of political trust after the crisis hit. It emerges from our analysis that mechanisms which were adopted early on and with cross-political support proved effective. In contrast, mechanisms that were adopted later, after critical elections were politically polarizing and delivered sub-optimal results. This broad conclusion resonates with the previous chapter's finding that after economic crises the window of opportunity for deploying effective mechanisms is narrow: the unifying effect of a crisis dissipates quickly, shock turns to anger, and elections tempt political elites to adopt mechanisms that are instrumental rather than institutional in their objectives.

The chapter notes that Iceland's practice can be characterized as *innovation in isolation*: its political elites were not aware that the holistic approach they adopted was viewed as best practice in the field of transitional justice. The chapter argues that such innovation in isolation demonstrates that an economic crisis in a democratic state can create many of the imperatives that are the subject of the transitional justice framework: to respond to loss of legitimacy through truth-seeking; to enforce individual accountability through prosecutions; to compensate victims through reparations; and to define institutional responsibilities through constitutional reform. Thus, Iceland's experiences underscore the robustness of the transitional justice framework's prescriptions as well as the framework's usefulness for studying how established democratic states can respond to economic crisis.

The third and final chapter, 'Truth Commissions after Economic Crisis: The Impact of Institutional Learning', asks: *In what way, if any, can a truth commission effectively drive learning and reform in an established democratic state, and what impact can it have?* The chapter uses a novel impact assessment approach to evaluate the most effective of the three truth commissions discussed in the first chapter (Iceland's Special Investigation Committee). The approach unpacks the truth commission process by using a set of observable indicators to reveal how that process and specific design decisions shape the learning that emerges and its impact. The chapter finds that when institutional objectives are kept at the forefront, truth commissions can have a direct impact on

the reform of political and financial systems. Relatedly, they have the potential to clear and hold space that would otherwise be open for populist abuse.

The dissertation closes with an extended discussion of the findings of the three chapters, the limitations of the study, and the implications for future research and practice. It argues that transitional justice brings a new perspective to the study of economic crises in established democratic states, and that it gives us mechanisms to turn this into practice.

## CHAPTER 1. TRUTH COMMISSIONS AFTER ECONOMIC CRISES: POLITICAL LEARNING OR BLAME GAME?

The recent Great Recession in Europe provides an excellent avenue to explore how political elites use institutions to learn from policy failures. Of special relevance in this case are the truth commissions (TCs) established by several countries to identify the causes of their economic meltdowns. Their goal was to document institutional, political and/or individual failures and publish reports offering guidelines for institutional, policy and regulatory reforms. These particular TCs constitute an institutional innovation. Their sudden appearance, coupled with differences across countries, prompts numerous questions, two of which we seek to answer here. First, what explains the decision to set up a TC after an economic crisis? Is there a uniform explanation for their establishment or does this vary? Second, why in certain countries did political elites attempt to use TCs for political gain, while in others, they favoured restoring trust to state institutions over partisan considerations?

This article addresses these questions by looking at three economic TCs: the Icelandic Special Investigation Committee (SIC), established in 2008; the Greek Committee on Public Debt, established in 2015; and Ireland's Parliamentary Banking Inquiry (BI), established in 2014. From the comparison, we identify two types of political learning displayed by political elites related to the establishment of a TC. The first, institutional learning, applies to countries where rebuilding trust after a major economic crisis is important for political elites: here, levels of public transparency and trust in institutions were already high in pre-crisis periods, and a TC appeared in the early stages of the crisis. The second, instrumental learning, applies to countries where newly elected governments had no direct involvement with the arrival or immediate (mis)management of the crisis. Here, TCs were only established when seen as expedient, usually before or after critical political events such as elections or International Monetary Fund (IMF) bailout negotiations. In effect, they were useful devices to blame predecessors and gain electoral spoils.

This article is divided into seven sections. The section ‘TCs, Transitional Justice and Economic Crises’ defines TCs and explains why the term can be used to describe the institutions under study. The section ‘The “Blind Spot” of Political Learning’ shows how the concept of political learning can help us understand the decision to adopt TCs. The section ‘Puzzles and Research Design’, discusses the research methodology and design, while the following section, ‘Alternative Explanations’ considers several alternative, albeit unsatisfactory, hypotheses as to why governments adopt economic TCs. The section ‘Institutional versus Instrumental Learning’ develops a new theoretical framework to explain the adoption of TCs by governments at either early or late stages: institutional learning for early adopters and instrumental learning for late adopters. The final two sections explore each type of learning in turn, with case studies of institutional learning (Iceland) and instrumental learning (Ireland and Greece). The article concludes by evaluating the success of these mechanisms and identifying their flaws. As will be shown, the instrumental approach to learning can backfire on governments, downplaying instead of highlighting the role their predecessors played in the crisis.

### 1.1 TCs, TRANSITIONAL JUSTICE AND ECONOMIC CRISES

Transitional justice is a framework usually associated with dealing with the past in post-conflict societies (Kritz, 1995). It points to the importance of learning from the past and explores the impact of different policies of formal acknowledgement of wrongdoing, including prosecutions (Sikkink, 2011), TCs (Wiebelhaus-Brahm, 2010) and amnesties or partial impunity (McEvoy & Mallinder, 2012) on the quality of the emerging political institutions.

TCs are independent, officially sanctioned, fact-finding mechanisms tasked to investigate and document patterns of past human rights violations, often following a political transition from conflict to peace or from authoritarianism to democracy (see Freeman, 2006; Hayner, 1994; Wiebelhaus-Brahm, 2010). They are usually vested

with investigative powers, ranging from subpoenaing and taking testimonies from victims to overseeing forensic investigations. They prepare a final report with their findings and offer recommendations to improve the quality of human rights. The first TCs were established in Latin America in an effort to shed light on clandestine patterns of crimes, such as finding the whereabouts of the disappeared: those persons kidnapped and secretly buried by authoritarian regimes (Kovras, 2017). Since then, particularly after the global prominence of the post-apartheid South African Truth and Reconciliation Commission (TRC), TCs have diffused globally. While TCs have historically been associated with the study of violence and political change, their use has become more mainstream, used, for example, to analyse economic and social change, both of which have a powerful impact on citizens' lives (Michalowski, 2014).

The transitional justice framework – TCs in particular – is relevant to this study for three reasons. First, transitional justice is conceptually based on the assumption that transitions are 'critical junctures' and decisions have long-term potential to determine the quality of the emerging democracy (Olsen, et al., 2010; Sikkink, 2011). Thus, it implicitly considers learning from the past to be an instrument of political and institutional reform. The intuitive question in most 'transitions' is whether societies which do not deal with past policy failures or look for the causes of a crisis are condemned to repeat their mistakes, including in the economic sphere. To give a comparative example, on one hand, despite dealing proactively with the human rights abuses of the 'dirty war' (1976–1983; Sikkink, 2011), Argentina has not addressed the causes of its economic collapse in the early 2000s (Panizza, 2014). On the other hand, following the Great Depression of the 1930s, the US Senate mandated the Pecora Commission to identify the causes of the 1929 Wall Street Crash. In addition to analysing the preconditions, Pecora suggested innovative institutional reforms, resulting in the Glass-Steagall Act; this led to the separation of commercial from investment banking which ultimately protected markets from a financial crisis for several decades.

Second, in the aftermath of gross human rights violations and also after economic meltdown, state institutions are severely weakened and state-society relations fractured. The examination of transitional justice in general and TCs in particular can be useful to determine how and why political elites deploy (or refrain from using) institutional mechanisms to restore trust in the state.

Third, and most importantly, TCs and other truth recovery initiatives are mandated to uncover and publicly acknowledge something ‘hidden’ in the past, for example, the above-mentioned disappearances in Latin America. Contemporary financial crises are equally hidden. They are complex and technical, often occurring in distant or virtual locations, enabling only a minority of experts to understand their root causes (see Helleiner & Pagliari, 2015; Palan, 2006). Economic TCs, like their sister commissions in Latin America, have the capacity to ‘uncover’ complicated processes unseen by most citizens but affecting their daily lives.

TCs are recognised as establishing simplified, yet authoritative, narratives of the causes of crisis that can be easily understood by the general public. These backward-looking mechanisms document patterns of political, economic or institutional failure; their mandate is restricted temporally, and they are assigned investigative powers. The economic commissions discussed here (Iceland, Ireland and Greece) exemplify this format. Table 1 summarises the composition, mandate and independence of each.

**Table 1.** Composition of TCs in Iceland, Greece and Ireland.

State	Mandate	Composition	Level of independence
Iceland	Institutional and individual causes of meltdown	Ombudsman; judge; academic	Appointed by parliament/independent
Greece	Audit debt	Politicians; experts; members of civil society	Appointed by president of parliament/controlled by government
Ireland	Collapse of banks; policy conditions leading to same	Politicians; expert witnesses	All-party parliamentary committee



TCs usually include experts, including judicial authorities, academics and public administrators; their concern is identifying broad patterns of political, legal and institutional failure. The key objective of their final report is to convert these failures into policy recommendations. Fact-finding commissions have been mushrooming around the world; however, we need to distinguish between TCs and other truth recovery bodies. Otherwise, we risk defining all such mechanisms as TCs and devaluing their unique qualities.

TCs usually differ from technical commissions or parliamentary inquiries in their investigative scope, composition and the periods under scrutiny. In the economic realm, technical reports ordered by politicians or independent authorities tend to focus on specific aspects of crises, such as the collapse of a single bank or the role of regulators. For example, the UK Financial Services Authority (FSA, 2008, 2011) prepared reports on the Northern Rock and the Royal Bank of Scotland fiascos. As the mandate and scope of these investigations remained narrow and particular, they cannot be considered TCs. The ‘Turner Review’, tasked to identify flaws in the UK banking system, had a more expansive target of investigation (FSA, 2009). Still, it was primarily a ‘review’ of existing regulatory practices, not a broader narrative of what went wrong. The truth recovery initiatives under scrutiny in this article were asked to critique the established institutional framework, hence their categorisation as TCs. Also common to the three cases is the (theoretical) authority vested in them by national parliaments, another factor separating TCs from other report-producing bodies serving similar functions (Hayner, 1994: 604).

## 1.2 THE ‘BLIND SPOT’ OF POLITICAL LEARNING

Political learning has been studied by many scholars in many ways, some considering individuals and others focusing on institutions (Bermeo, 1992; Mishler and Rose, 2007; Soss, 1999). For Nancy Bermeo (1992), political learning is a process whereby beliefs and tactics are modified following ‘severe crises, frustrations, and dramatic

changes in environment' (p. 274). Such events force re-evaluation of the ideas informing past actions.

Political economists have already explored learning processes after major crises. Many have convincingly illustrated how an economic meltdown can challenge economic orthodoxy and engender new ideas in policymaking (Blyth, 2001; Chwieroth, 2010; Culpepper, 2008). And many studies consider the long-term consequences of ideational shifts, for example, attitudes to former political regimes. However, although it is now common wisdom that crises stimulate political learning, we have limited knowledge of the institutional mechanisms guiding this process.

Some say that despite the impact of crises, opportunities for learning and reform are fewer than often thought (Boin and 't Hart, 2003). Arjen Boin et al. (2008) contend that while one would expect 'political learning to get to the heart of "what went wrong" and ensure that "the facts" become available' to inform future policy decisions, such an outcome is by no means 'the norm' (pp. 14–15). They suggest investigations into crises rarely produce clear lessons, with some notable exceptions, such as the Hillsborough stadium disaster or the unsafe convictions of the 'Birmingham six' in the United Kingdom. Indeed, they say such investigative mechanisms are often themselves sites of contestation and politicised wrangling.

Such argumentation draws a strict dividing line in the debate on political learning: either crises provide valuable opportunities to learn lessons from past mistakes or their potential to drive such processes is limited. But is it not also possible that different types of learning occur during crises, and that these are shaped, at least partially, by the institutional mechanisms established to drive the process? In effect, studying the institutional mechanisms set up to deal with the crisis can reveal a lot about whether and how political elites learn from the past and what type of lessons they glean from past policy failure. This is something the literature on political learning has not adequately explored.

Bermeo offers a useful way to examine these themes. Crises, as she puts it:

*force people to re-evaluate the ideas that they have used as guides to action in the past, failures in economic policy act as turning points that frequently lead to changes in the priorities, tactics and strategies deployed by a 'critical mass' of learners (Bermeo, 1992: 276; emphasis added).*

This allows us to address a blind spot in the literature, the 'politics' of political learning: whether and to what extent tactical manoeuvrings are driven by genuine imperatives of lesson learning (institutional learning) or by political considerations (instrumental learning), or occasionally both.

Political learning is neither homogeneous nor linear. It takes different trajectories, shaped by endogenous political realities, including electoral, ideological and symbolic politics. Crises may provide opportunities for reform. But they are also ripe moments for apportioning blame or seeking electoral gains (Boin et al., 2008; Boin and 't Hart, 2003). In the latter instance, learning is driven (or thwarted) by political actors' need to legitimise favourable discourses (or contest hegemonic narratives) about the origins of crisis: in other words, they play the blame game (Hood, 2010).

A final caveat is how to conceptualise learning. Scholars have explored different levels of learning, including but not limited to ideas, policies and institutions. In this article, we focus on the latter, exploring the institutional mechanisms that convert past failures into lessons (for a more detailed operationalisation, see below). Given the temporal proximity of the economic crises and the commissions under investigation, it is impossible to trace their full impact on policy or to define major ideational shifts. Although we acknowledge that the three levels of learning occasionally overlap, we focus on institutions, believing that the institutional mechanics of learning can reveal a great deal about the other two by illuminating the political drivers shaping policy responses.

### 1.3 PUZZLES AND RESEARCH DESIGN

To understand the institutional strategies political elites deploy to deal with accountability and learning from crises, we address two overlapping, puzzling questions. The first concerns the timing of the decision to adopt an economic TC: while Iceland established a TC at an early stage of the crisis, Greece and Ireland did so much later. What accounts for ‘early’ versus ‘delayed’ truth seekers? The second concerns variations in learning outcomes. Iceland’s commission paved the way for learning institutional lessons, but TCs in Greece and Ireland became overtly politicised. What accounts for these divergences?

Our questions call for a comparative research design (Lijphart, 1971). While difficult to generalise conclusions from single-case studies, large-n quantitative analyses are frequently based on ‘conceptual stretching’ (Sartori, 1970). Small-n comparisons inspire more confidence in the accurate measurement of the chosen concepts, a key element in theory development (George and Bennett, 2005). We draw on ‘comparable cases’ that are puzzling in their outcomes (Lijphart, 1971; Przeworski and Teune, 1970). More precisely, we compare cases with similar background conditions but slightly different policy responses. To understand the decision to adopt TCs and the timing, we carry out process tracing for our three case studies based on qualitative interviews with politicians and policy-makers who established or participated in the commissions and on the archived proceedings of the TCs (George and Bennett, 2005).<sup>1</sup> We draw extensively on official publications of the commissions, including interim or final reports, minutes from their meetings, press releases and witness statements to the TCs by current and former political leaders in the chosen countries, as the most reliable sources to understand both the rationale for their original adoption and the scope of their investigation. This is triangulated with references to mainstream national newspapers – excluding tabloids – where appropriate. Our objective is to trace the learning process by focusing on the reports

---

<sup>1</sup> The empirical material for this article draws on data collected during the early stages of a broader research project. We conducted eight pilot interviews, data from five of which are cited herein, with political elites, policymakers and other stakeholders who participated in the commissions under investigation.

of the commissions, hence the focus on their proceedings. Such evidence includes the testimony of key political figures in power during the crises, as well as those in opposition who won subsequent critical elections. This allows us to observe whether, and to what extent, politicians sought to use the TCs instrumentally as a partisan blame game or as a non-partisan tool for learning lessons.

We acknowledge that the small number of cases increases the potential for the problem of ‘too few cases, too many variables’ (Collier, 1993). This is not determined by our research design but by the fact that the universe of cases is small. Economic TCs are relatively novel. Hence, we are analysing a fluid and emerging phenomenon which remains open to future refinement of our hypotheses with the emergence of new cases. To minimise the impact of this methodological reality, we compare three of the most prominent cases while ruling out several alternative explanatory hypotheses.

#### 1.4 ALTERNATIVE EXPLANATIONS

The type of crisis may explain why an economic TC is set up. Greece had a debt crisis, while Iceland and Ireland had banking crises, possibly making it easier for the former to look for individual culprits and for the latter to evade responsibility by pointing to ‘reckless’ bankers. This hypothesis does not hold, as all three countries established TCs.

Structural and political explanations might be more useful. Perhaps it is not solely the type or depth of crisis but its political management that matters. As Table 2 shows, in countries where leaders negotiated IMF programmes, the consequences of the crisis were mitigated or spread over a longer period. However, in countries suffering banking-sector collapses before emergency financing was agreed upon, the popular pressure to establish a TC to ascertain the causes is evident, as in Iceland. But this fails to account for the decision of countries already in IMF programmes to adopt TCs,

such as Greece and Ireland. Clearly, the situation is complicated, and a single explanation is inadequate.

**Table 2.** Depth of Crisis (Peak to Trough) and Number of Years in Recession

	Peak year	Trough year	Peak GDP	Trough GDP	Difference	Difference %
Iceland	2007	2009	21,295	12,887	8,408	39
Greece	2008	2013	354,461	239,862	114,559	32
Ireland	2008	2010	274,919	221,357	53,562	19

### 1.5 INSTITUTIONAL VS. INSTRUMENTAL LEARNING

A common thread linking all countries experiencing economic crises is the challenge to political and judicial institutions. Economic shocks raise questions about accountability, responsibility and learning from policy failures. Questions such as ‘whose fault was it?’, ‘what went wrong?’ or ‘how did our institutions not prevent the disaster?’ are commonly asked. The response of political elites and institutions varies according to the expectations of the public in different countries.

We hypothesise that political leaders in countries with high pre-crisis levels of trust in institutions, such as Iceland, will be more responsive to popular calls for accountability (Table 3). An institutional logic will drive learning from policy failures, largely independently of political considerations or ideology. Here, TCs are useful mechanisms to convert failures into lessons to prevent future crises. The logic of institutional learning and the need to rebuild trust in institutions are expressed by elites across the political spectrum. Thus, we expect an economic TC to be established early in the crisis, irrespective of the ideological orientation or the degree of culpability of the incumbent government. Similarly, we expect cross-party support for such an endeavour. Institutional learning is premised on securing the long-term legitimacy of the democratic regime and trumps short-term party-political considerations. Therefore, political elites will establish a TC even if the final report risks putting political blame on them, not least because the electoral and legitimacy cost of inaction would be much higher. Responsiveness to public calls for

accountability and learning from one's own policy failures to strengthen institutions are twin features of institutional learning.

**Table 3.** Two Types of Learning after Crisis.

Type of learning	Objectives	Focus	Timing
Institutional learning	Rebuild trust/legitimacy Protect institutions in the future	Institutional failure	Early after crisis
Instrumental learning	Create favourable political narrative Blame game Electoral gains	Policymaking failure	After Critical election (new parties and demise of dominant parties)

This hypothesis is supported by empirical evidence. Table 4 summarises average levels of trust in central political institutions (national parliament, government and judiciary) across our cases in the five pre-crisis years, defined here as the signing of an IMF programme. To measure perceptions of public transparency, we consider the average perception of corruption (in parliament and the judiciary) for the same periods, with the most common indicators and sources (Eurobarometer, European Social Survey and Corruption Perception Index) used to measure trust and transparency. While sometimes contentious, these metrics are useful for mapping political trends. A glance at the table shows that Iceland is an outlier, with considerably higher levels of trust and transparency. In this case, high public expectations of ascertaining responsibility for past failure locked political leaders into a logic of institutional learning; this explains why Iceland's political elites established a commission almost immediately and why it was the incumbent government which did so.

**Table 4.** Average Pre-Crisis Levels of Trust in Institutions (Judiciary, Parliament and Government) and Public Transparency (perception of Corruption in Judiciary and Parliament).

Country	Average trust (%)	Average CPI (1-10)
Greece	49.10	4.36
Iceland	59.70	9.38
Ireland	40.80	7.60

CPI: Corruption Perception Index; IMF: International Monetary Fund.

Period under investigation 5 years prior to the signing of the IMF programme

Sources: Eurobarometer, European Social Survey and Corruption Perception Index (Transparency International)

This does not explain the decision to adopt a TC in Greece and Ireland. Here, we see a second type of learning, instrumental learning. In both countries, there is a minimum level of trust in public institutions but it is insufficient to lead to the outcome seen in Iceland. Instead, TCs emerged as a result of political elites' decision to play the blame game, with the post-crisis government hoping to create authoritative public (and finger-pointing) narratives of the causes of the crisis to suit its own interests. Learning from the past, then, is instrumental, geared towards ideological and policymaking critiques of previous governments, not a bid to highlight institutional failures. Simply stated, such TCs are a convenient mechanism to instrumentally use past policy failures to perpetuate the new governing party's discourse of blame, and the timing of their adoption depends on a critical election leading to the demise of one party and the rise to power of another.

Two caveats are in order. First, there is a relative dearth of knowledge of the operationalisation of the concept of learning. Learning means different things to different scholars. To explain what learning entails in the contexts of TCs and to support our theoretical framework with observable empirical phenomena, we establish three sets of indicators to determine the instrumental or institutional pathway of learning, focusing on the three key stages in the life of TCs: the 'decision to adopt', the 'mandate' and the 'report'.

The decision to adopt is crucial, with the potential to explain the timing and political dynamics that paved the way for the establishment of the commission in the first instance. When a commission is set up or whether there is cross-party consensus can reveal a lot about the instrumental or institutional logic behind it. As the existing literature on TCs explains, the specific mandate is critical in shaping the boundaries of learning (Chapman and Ball, 2001). What is the temporal scope of the investigation? Which issues are included or sidelined from its mandate? Does it focus narrowly on bad decision-making of individuals or on broader patterns of institutional failure? What is its level of independence from power-holders? These critical questions shape the type of learning. Finally, the afterlife of the commission is pivotal.



Does the TC publish a report, and if it does, what type of recommendations does it offer? More importantly, is there a follow-up to implement the recommendations or not? These observable indicators can determine whether a particular commission is driven by institutional or instrumental learning.

**Table 5.** Types of Learning and Truth Commissions.

Steps	Observable indicators
Decision to adopt	Political timing of adoption Political support
Mandate	Temporal scope Investigative powers Scope of investigations Issues included Level of independence from politicians Focus on patterns of institutional flaws
Final report	Publication of report Scope of recommendations Cross-party support for recommendations Follow-up activities to act on recommendations

Second, the two types of learning are not mutually exclusive; as will be seen, the two logics often co-exist, creating a dynamic explanatory framework. In effect, it is not exclusively the logic of principles that guides political elites to follow the institutional learning pathway; rather, the institutional framework raises the electoral cost of inertia or partisanship. Equally, it may not be avarice alone that leads new governments to follow an instrumental pathway, especially as the instrumental approach often delivers sub-optimal outcomes for them, as our case studies demonstrate.

## 1.6 INSTITUTIONAL LEARNING

### *Iceland's Special Investigation Commission*

In October 2008, Iceland's three major banks collapsed within a week, taking 97% of the country's banking system with them: estimated at US\$180 billion, this was the

third largest corporate bankruptcy on record (Johnsen, 2014). The crash ended an unprecedented period of growth, facilitated by cheap credit and exponential banking-sector growth, from 174% of gross domestic product (GDP) at the end of 2003 to about 1000% when it unravelled in 2008 (Benediktsdottir et al., 2011). While the nation was still in shock, and before any protest demands arose, Icelandic political elites moved quickly and pre-emptively, announcing that the causes of the crash would be investigated. Iceland's Special Investigation Commission (SIC; henceforth also TC) was established, the first of its kind in Europe. The process paving the way for the commission, its mandate and scope were all shaped by the institutional logic of learning.

The decision to establish this TC was made by the incumbent government, led by the right-wing Independence Party (IP). IP had held power for 18 consecutive years and was perceived responsible for the creation and (mis)management of the crisis. The only reason for political elites to set up mechanisms that could potentially incriminate them was the fear that the political costs of inaction or a cover up might be even greater. As noted above, this is arguably more common in countries with established cultures of transparency, accountability and trust in institutions. Guided by this logic, only 3 days after the banking-sector collapse, Prime Minister Geir Haarde announced that an investigative mechanism would be established to 'be clear what happened and why' (Morgunbladid, 12 October 2008: 10–11). The most senior political advisor to the leader of the Social Democratic Alliance (IP's coalition partner) said, 'It was just the right thing to do; we owed the nation an explanation of what went wrong and what needed to be fixed' (interview, Krístrún Heimisdóttir, Reykjavik, 26 May 2015). Notably, the commission had cross-party consensus, highlighting the priority of reinstating the legitimacy of the political system. An opposition leader argued, 'Geir Haarde showed considerable maturity and realised this needed to be done. The events were of such magnitude that there would never be any agreement or reconciliation unless they were thoroughly investigated' (interview, Steingrímur J. Sigfusson, leader, Left-Green Movement (LGM), Reykjavik, 2 December 2015).

The Icelandic TC's design and mandate illustrate the institutional logic of learning. For one thing, the appointed commissioners reflect the key investigative institutions of the country: a Supreme Court Judge, the Parliamentary Ombudsman and an Icelandic-born Yale economist with banking expertise. According to the Speaker of Parliament, a member of IP who tabled the bill establishing the TC, it was thought necessary that it be headed by 'irreproachable professionals that were outside of the daily grind of politics' (interview, Sturla Böðvarsson, Reykjavik, 1 December 2015). Efforts were also made to insulate the commission from party politics and reinforce its independence to ensure genuine lesson learning.

As the TC's primary objective was to reinstate trust in state institutions fractured by the crisis, its mandate and scope were correspondingly broad, namely, to:

*[S]eek the truth behind the events leading to, and the causes of, the downfall of the Icelandic banks in October 2008, and related events, [to] assess whether mistakes or negligence occurred in the course of the implementation of the laws and other rules regulating and providing for control of the Icelandic financial sector [and to determine] what persons may be responsible (Althingi, 2008).*

Political leaders understood its open-ended scope to be central in regaining citizens' trust. According to LGM's leader and later Minister of Finance, 'politicians realised that this (the SIC) could not be a compromise; this needed to be for real – otherwise there would be no trust' (interview, Steingrímur J. Sigfússon, Reykjavik, 2 December 2015).

To carry out the demanding investigative task, the commissioners were given exceptional investigative powers, including but not limited to subpoenaing witnesses, seizing evidence and searching premises. Obstructing the investigation was punishable by up to 2 years' imprisonment. Ultimately, the TC interviewed 147 witnesses.

To increase the potential for learning, the proceedings took place behind closed doors, and witnesses were given guarantees that statements made to the commission could not be used against them before any courts. This was to make participants feel

comfortable enough to share their knowledge and at the same time to ‘avoid rehearsed, standardised responses that are designed for media headlines and shifting responsibility on to others’ (anonymous interview, SIC researcher, Reykjavik, 30 November 2015). In some cases, when the microphones were turned off and the official interview was over, witnesses were encouraged to talk ‘off the record’. In short, identifying failures and learning from them seems to have been the genuine guiding principle.

Finally, the institutional logic of learning is evidenced in the follow-up activities. In response to the commission’s report, the new left-wing government appointed a special working group of legal and public administration academics; this group made further recommendations on how the cabinet and individual governmental institutions should respond (Forsætisraduneytid, 2010). Over and above the executive’s initial response, Parliament established a cross-party parliamentary committee to ‘draw lessons from the SIC report and point to ways for reform’. In September 2010, 5 months after the commission delivered its findings, the all-party committee published a 265-page report distilling the findings and noting the lessons to be learned. Based on this report, Parliament unanimously passed a resolution setting out a legislative reform agenda. ‘It is important that the SIC report continues to be a guiding light’, it said. Furthermore, ‘it is important that everyone looks critically at their own actions and uses the opportunity that the report offers to improve society’ (Althingi, 2010a).

The Icelandic TC is the only mechanism in our cases to be guided by the institutional logic of learning and honouring the need to rebuild the trust of the public in institutions. In sharp contrast to the other two examples, it was swiftly established, largely independent and legitimised by ongoing cross-party consensus.

## 1.7 INSTRUMENTAL LEARNING

### *Greece's Debt Audit Committee*

The economic crisis radically restructured Greece's political system (Kalyvas, 2015; Kovras and Loizides, 2014; Pappas, 2014). Support for the dominant parties, socialist PASOK and conservative New Democracy (ND), nosedived. Political polarisation was reflected in violent street protests, riots and the electoral rise of the far right (Ellinas, 2013; Ellinas and Lamprianou, 2014). The most important political development was the transformation of the Coalition of the Radical Left (SYRIZA) from a fringe party into a dominant one. The creation of Greece's TC reflects SYRIZA's rise, lending credence to our proposed theoretical framework of learning.

Despite deep recession, skyrocketing unemployment, vocal calls for accountability and violent street protests during the first 4 years of the crisis (2010–2014), attempts to investigate the causes were blocked by the dominant parties amid the pressing need to implement a harsh austerity programme. During these years, ND and PASOK, seen as responsible for creating the exorbitant Greek debt, became coalition partners, with little incentive to investigate their own policy failures. However, SYRIZA was keen to apportion blame to ND and PASOK and create a new (politically favourable) narrative to bolster its legitimacy. Accordingly, 3 months after gaining power (April 2015), SYRIZA established a debt audit committee (henceforth the TC).

Such a move is not unique to Greece. Many leaders create mechanisms to settle old scores against competing political elites. What is exceptional in the Greek case is its extension of the blame game to include external actors, by challenging the legitimacy of Greek debt and seeking to negotiate a new programme with its creditors. SYRIZA's logic is best expressed by former Speaker of Parliament Zoe Konstantopoulou, the politician who created the TC:

*The current government is the first in decades that did not contribute to the creation of the public debt ... [T]he government is legitimised to use all available tools and arguments in order to challenge and write off the debt, or at least to stop repaying*

*it for so long as it threatens the survival and the civil and economic rights of the Greek people.*

The instrumental drive of the commission is evident in its (ideological) origins. According to a leading member of the commission, it emphasised the international systemic causes of the crisis, such as the external conditionality imposed by the creditors and its impact on national sovereignty, and played up the human rights of the Greek people (interview, London, 12 December 2015).

In short, Greek ideological instrumentalism was expressed in the effort to establish a narrative supporting the view that since the debt was created by systemic international influences, it was illegal. If this narrative were established, it could be used as leverage in ongoing negotiations with creditors to forgive the debt. To this end, the commission was mandated to:

*[G]ather all information relevant to the emergence and disproportionate increase in public debt, and to subject the data to scientific scrutiny in order to determine which part of the debt can be identified as illegitimate and illegal, odious or unsustainable, during the bailout period, from May 2010 to January 2015 as well as in the preceding years (Greek Debt Committee , 2015).*

The Greek TC was established in April 2015, shortly after SYRIZA's victory, as a special independent commission of Parliament. Its opening session was a highly visible event addressed by the President of the Republic and attended by the Prime Minister. In sharp contrast to other TCs staffed by experts or politicians, the Greek commission included anyone who might be interested, from international civil society organisations to a folk singer. A key feature was its exclusive focus on the public debt and its exclusion of broader issues of domestic institutional failure. The narrow temporal scope, the 'bailout' period (2010–2015), is equally noteworthy. The Greek problem was framed as one created after the imposition of external conditionality in 2010, thereby excluding from scrutiny any endogenous institutional failures (i.e.

corruption, tax evasion and party patronage) contributing to the debt in preceding decades.

Guided by this instrumental logic, the TC became a political tool to hit two targets at once. First, it was intended to strengthen the position of the Greek government in renegotiating the terms of previous Troika (IMF-EU-ECB) programmes. It had a predetermined conclusion, evident in its slogan: ‘Audit the debt, write it off’. As the lead expert of the commission, Eric Toussaint, unambiguously stated, it could:

*arm the Greek government with legal arguments on the matter of partial debt abolition during the negotiations in relation to this matter ... we will determine which part of the debt can be qualified as illegitimate, illegal, odious, or unsustainable (cited in Papagiannis, 2015).*

Auditing Greek public debt over three decades was a Herculean task. Nevertheless, the commission published its preliminary findings 2 months (June 2015) after its first meeting and only 2 weeks before the Greek government called a referendum on the terms of the new Troika programme. The timing highlights its politicised role. Not surprisingly, given the TC’s ideological origins, the preliminary report concluded Greece was ‘a victim of an attack premeditated and organised by the IMF, the ECB and the European Commission’ (Greek Debt Committee, 2015: 2).

Second, the commission took aim at opposing domestic political elites. Although the debt was a ‘premeditated’ international plan, the report found ‘Greek authorities conspired’ to protect domestic and international financial institutions (Greek Debt Committee, 2015: 1). Greek politicians deemed responsible were not framed as incompetent or reckless policymakers but as conspirators in a consortium of foreign interests. This overlapped with a broader political narrative in which the government was (or should be) the guardian of national sovereignty. The leader of the populist right independent Greeks (ANEL), SYRIZA’s junior coalition partner, argued:

*Certain politicians refrain from attending this commission, and most of them participated in (previous) governments that surrendered the country and its national sovereignty over the past few years. Was this unintentional or on purpose? The commission will prove that some of them benefitted from this policy (Greek Truth Committee Session, 5 April 2015).*

Paradoxically, although Greece faced predominantly a domestic public debt problem and had most to learn from illuminating well-entrenched endogenous institutional flaws, the TC virtually ignored these. By limiting its analytical gaze to systemic and external failures, it forestalled lessons useful for domestic reforms. Endemic problems such as corruption were either sidelined or framed as externally driven.

The abrupt termination of the Greek TC best illustrates its instrumental nature. Within weeks of SYRIZA's signing of a new Troika programme, in July 2015, the party withdrew its support from the TC. It did not even get to publish a final report.<sup>2</sup> After this volte face, the TC was irrelevant; in fact, continuing the investigation might have been perilous for SYRIZA. Several MPs perceived the leadership's decision to agree to a new Troika programme in the summer of 2015 as capitulation. This led to a wave of MP defections, trimming the party's power to pass bills necessary to receive the new loans. These bills passed with the support of opposition parties, making it impossible for the government to settle scores with the opposition while simultaneously depending on them. Moreover, any ongoing investigative mechanism could backfire; for example, it might highlight the mismanagement of the negotiations and the adverse impact of SYRIZA's economic policy while in power, including the imposition of capital controls. For instance, members of the committee published an additional report showing the illegality of the memorandum signed by SYRIZA in July 2015. A leading figure of the commission is adamant: 'The continuation of the truth commission would have exposed the role of the government' (interview, London, 12 December 2015).

---

<sup>2</sup> It should be noted that the Greek debt committee continued its operation even after the defection of most politicians supporting the commission from SYRIZA. However, after 2015, it had no official mandate, and thereby, it could not be considered as a truth commission (TC).



### *Ireland's Banking Inquiry (BI) Commission*

Irish attempts to learn lessons from its banking crisis were significantly delayed, but before entering the EU/IMF programme in November 2010, the incumbent government began investigating the crisis. Its investigations produced three technocratic reports on banking and regulatory failures (Oireachtas, 2010a, 2010b) and the failure of policy-makers to assess risks (Oireachtas, 2011). Such an approach, although potentially illuminating, was at odds with fuller lesson learning. It was not until after a critical election that a new government established a Banking Inquiry (henceforth the TC) to examine the factors leading to the Irish collapse from 1992 onwards.

The Irish TC took an instrumental approach to lesson learning. As in Greece, the economic crisis ruptured the party system. The dominant party, the centre-right Fianna Fáil (FF), was relegated to third place for the first time in its history (Hutcheson, 2011). In 2011, it was replaced by a coalition of the centre-right/conservative Fine Gael (FG) and social-democratic/centrist Irish Labour (Labour, 2011). This change in government spurred politicised attempts to establish accountability.

Following the election, proposals to strengthen the powers of parliamentary inquiries were advanced as part of the government's coalition programme, requiring approval in a referendum. In a pre-emptive move, the coalition stated that the TC would begin once such powers were acquired (although the original plans to increase powers of investigation were unconnected to the crisis). The referendum in October 2011 was narrowly defeated. This stymied the government which had hoped to use the new powers to plan a 'lengthy and detailed embarrassment of Fianna Fáil's stewardship of economic and banking matters' (Leahy, 2013).

Nevertheless, a TC was established by statute in late 2014, comprising politicians from all parties and independents (Oireachtas, 2015). Despite the ostensible motivation of truth-seeking, it displayed a combination of instrumental learning and

adversarial politics, quickly undermining its credibility. For example, the government insisted on adding two of its parliamentarians to the committee to ensure a majority, enabling it to set the terms of reference – although the TC itself was technically independent.

The TC heard testimony from current and former Prime Ministers, civil servants, bankers and economists. Calling on key parliamentary figures to testify was part of an instrumental approach to learning and highlighted the ongoing antagonism between politicians. Members of the FF-led government, which presided over the initial Troika programme, understandably stressed their achievements before the crisis. Former FF Prime Minister, Brian Cowen (also a Finance Minister) mentioned the huge reductions in debt-to-GDP ratios during his tenure; he further argued there was no indication in any of the advice he received that Ireland was headed for catastrophe (Brian Cowen, BI: Witness Statement, 2 July 2015).

For his part, his predecessor, Bertie Ahern (BI: Witness Statement, 16 July 2015), expressed sorrow that the crisis occurred but claimed his governments had been fiscally responsible:

*Those who say we squandered the boom forget that in my time as Taoiseach we actually recorded budget surpluses in 10 of our 11 budgets ... As a result, Ireland paid over a billion euro less every year in interest payments.*

When questioned more closely, Ahern (BI: Evidence, 16 July 2015) admitted 2008 levels of spending were too high but contended that had he listened to the opposition, he would have ‘spent three times more’. The implication was that any party in power would have had similar results – thus, by this logic, neither he nor his party was responsible for the crisis.

Those representing the coalition government (FG and Labour) behaved in a similar fashion, highlighting their pre-crash achievements and placing the blame for domestic failures at the door of FF-led administrations. Deputy Prime Minister Joan Burton

(BI: Witness Statement, 23 July 2015; Labour) claimed the previous government was largely at fault, stressing her own role in warning against its policies:

*[A] series of catastrophic economic policy decisions by the Fianna Fáil/Progressive Democrat Government created a huge distortion in the structure of the Irish economy ... I warned time and again against the property-based tax breaks fuelling this bubble ... Those responsible were the Fianna Fail led Government, the boards of the banks, the Central Bank and the Financial Regulator.*

But this approach backfired. When the Labour Party's policies in opposition were questioned at the TC, it transpired it had also suggested reducing taxes. Indeed, before the 2007 election, it also agreed on a joint platform with FG, advocating public spending increases. When this was put to FG leader Enda Kenny (BI: Evidence, 23 July 2015), he denied FG was anything like FF, referencing his party's emphasis on competitiveness:

*You make the point that, you know, we were advocating even for more public spending. Well, far from that, because a central focus of our opposition to Government was the massive waste and the inefficiency.*

Kenny also claimed FG's projections were based on figures from the Department of Finance or Economic and Social Research Institute (ESRI) – the same defence used by Ahern and Cowen. This shows the potentially counter-productive nature of the Irish approach. As independent parliamentarian Shane Ross (2015; an expert on banking) argued, 'The conclusion is awkward. If Fine Gael swallowed the line from the ESRI and the Department of Finance, does that not let Fianna Fail off the hook?' Even Kenny's fellow party members who were on the TC grilled him and the Employment Minister over their policies in opposition. Some had voted against Kenny in a leadership challenge in 2010, and it has been suggested that they were only available for TC duties because they had no cabinet responsibilities (Enda Kenny and Richard Bruton, BI: Evidence, 23 July 2015). In other words, the instrumental nature of the TC went beyond fighting between different parties to encompass intra-party squabbles.

The Irish electoral system may help explain the fate of the country's TC. The proportional representation by single transferable vote (PR-STV) system means electors vote for personalities, not parties (Kirby and Murphy, 2011), meaning members of the governing parties could use the TC to challenge the government at no necessary electoral cost to themselves. Thus, while the TC was a classic attempt at instrumental learning, its adversarial nature stopped it from becoming a simple witch-hunt of the previous government. The final report further supports our hypothesis of political culpability. While the coalition government attempted to use the TC instrumentally, the TC's report shared responsibility among the parties:

*All the main political parties, whether in opposition or in government, advocated pro-cyclical fiscal policies, including increasing expenditure and reducing taxation, in the years leading up to the crisis, as evidenced by their election manifestos in the 2002 general election and, especially, the 2007 general election (Oireachtas, 2016: vol. 1, p. 13).*

Its recommendations vis-à-vis government included reforming the management of transaction-based taxes and providing parliamentarians with 'training and support in technical content if they do not already possess the required skill set' (Oireachtas, 2016: vol. 1, p. 14), sparing any single party or politician from censure. Even a report written by one of the independent members, while most critical of the FF-led government, allocates blame across the political establishment, reckless bankers and the 'non-opposition' rather than apportioning all the blame to the government presiding over the slide into crisis (Higgins, 2016). In the Irish case, then, the attempt to use a TC instrumentally backfired on those who sought to profit from it politically.

## 1.8 CONCLUSION: TCS AND OMISSIONS

To relieve economic stress, most economists focus on forward-looking policies to stimulate economic recovery. This study of three European countries, however, shows how difficult it is for politicians to resist delving into past policy failures. Under certain conditions, this can be beneficial. By shedding light on the causes of the 1929

crash, the Pecora Commission was able to recommend a number of institutional reforms that protected the US economy from another major crisis for decades. If they are properly designed, TCs have the potential to convert past policy failures into institutional lessons that could protect national economies from past failures.

Yet by seeking to understand what went wrong and to learn from past mistakes, a state accepts (tacitly at least) a role for itself in preventing future crises. This, in turn, implies new and innovative or additional forms of regulation in the spheres of capital and economic development, with obvious implications for the realms of taxation, regulation and state-led economic planning. Such as, for example, how to avoid procyclical policies which can fuel the speculative ‘bubbles’ affecting the three case studies. How this can be done in an era of transnational capital flows has been the subject of considerable debate (see, for example, Helleiner, 2015; Piketty, 2014), and proposing solutions is beyond the scope of this article.

Nevertheless, it should be noted that the challenges faced by states are not merely economic – they are also inherently political. Those favouring a greater role for the state in economic and capital regulation may find themselves increasingly at odds with populist movements, nativist in outlook, which see more government as part of the problem (Canovan, 1999; Tope et al., 2015). The simplified narratives provided by TCs may struggle to compete with the even more simplified arguments of populists who seek to refashion the system in their own image, rather than refresh and reform it.

TCs should not automatically be viewed as universally positive mechanisms. They can be used instrumentally, as in Greece and Ireland, for party-political purposes; unfortunately, these can trim the perceived legitimacy of the existing political process and fuel the nativist and populist impulses which threaten the global and globalised economic system. That being said, the existence of an established culture of public transparency and pre-crisis trust in political institutions, as in Iceland, can lock political actors into a policy of delving into the past; in such cases, efforts to abstain

or to cover up responsibility could be electorally costly. This type of broad political consensus on the need to scrutinise past policy failures guides institutional learning.

In our analysis of three different economic TCs, we have identified what we could term a learning paradox: although societies with weaker cultures of transparency could benefit most from learning institutional lessons from crises, institutional learning is most difficult in those particular countries. We also find tensions between political learning and *realpolitik*. The stated objective of TCs is to learn from past policy failures. Yet once they start highlighting complicated aspects of the truth, those most useful for lesson learning, they are frequently stymied by politicians interested in a simplified narrative which excludes inconvenient truths, as in Greece and Ireland. Contemporary financial crises are complex phenomena with technical, institutional, regulatory and individual decision-making flaws. Converting a complicated phenomenon into a simplified narrative is both the virtue and the vice of a TC – akin to truth recovery mechanisms. Commissioners are tasked with converting complex processes into a publicly accessible narrative while offering recommendations to prevent future disasters, the essence of political learning. However, because they have the ability to create meta-narratives about the crisis, TCs become ideal instruments of symbolic politics, or *realpolitik*, for politicians seeking to establish expedient narratives and settle old scores.

From our analysis, it is clear that new governments enjoying comfortable majorities after critical elections may use TCs instrumentally to apportion blame and capitalise on public discontent to achieve the ‘constant end’ of electoral success (Bermeo, 1992). Yet all parties acknowledge the pragmatic need to maintain governmental stability as a prerequisite of effective decision-making to overcome deep economic crises. In times of economic stress, effective governance often necessitates consensus with the opposition who may have skeletons in their closets and, thus, prefer to block backward-looking accountability mechanisms. Thus, it seems that *realpolitik* trumps learning initiatives in times of crisis. TCs lose their appeal and utility when they reveal inconvenient truths about the parties establishing them. In such contexts, political

elites reframe their political narratives from backward-looking mechanisms of accountability to forward-looking policies aimed at resuscitating the economy. In the final analysis, the establishment of economic TCs for instrumental reasons, particularly in delayed cases, is merely a continuation of electoral politics by other means.

## CHAPTER 2. TRANSITIONAL JUSTICE AFTER ECONOMIC CRISIS: INNOVATION IN ISOLATION, THE CASE OF ICELAND

This article applies the framework of *transitional justice* and its theorizing of transitional justice mechanisms –namely ‘truth commissions’, ‘prosecutions’, ‘reparations’, and ‘constitutional reform’ –to analyse how one of the early casualties of the Great Recession, Iceland, attempted to come to terms with its economic crisis.

Iceland’s experience challenges the conventional wisdom that ‘impunity’ and ‘business as usual’ prevail after an economic crisis: an independent truth commission was established; a Special Prosecutor prosecuted and jailed the ‘Viking’ bankers; the former Prime Minister was brought before a High Court of Impeachment; reparations were provided to households; and a constitutional reform process was set in motion.

The deployment of transitional justice mechanisms should be valued for its contribution to the health of democracies and to good governance. After a severe disruption, such as an economic crisis, the obvious responses are to establish the facts, enforce accountability, provide reparations for the worst affected, and strengthen the legal framework. Indeed, the transitional justice paradigm is steeped in Western liberalism. It is the standard used to assess and recommend mechanisms that emerging democratic states (usually non-Western) should employ to deal with a difficult past and strengthen their democracy. However, when a developed economy crashes in an established democracy, these mechanisms are seldom deployed. Against this backdrop, the broad range of mechanisms deployed in Iceland provides an excellent avenue to explore assumptions about *whom* transitional justice applies to and for *what* end it is invoked. That is, if the scope of the transitional justice framework can be expanded from gross political and human rights violations in emerging democracies to include economic crises in established democracies.

To address this issue, the present paper draws on: sixteen semi-structured interviews with political elites in Reykjavik; a new Economic and Social Research Council-funded database on the political, legal, criminal, and regulatory policies in six crisis-



hit European states; and a broad range of archival data. It is organized into four sections. The first, ‘Applying Transitional Justice to Economic Crisis’ explores two features of transitional justice that are common to paradigmatic post-conflict cases in emerging democracies and post-economic crises cases in established democracies, namely, a conceptual anchoring in ‘*critical junctures*’ and ‘*learning from the past*’ and theorizing on the *mechanisms of transitional justice*. The section also advances preliminary hypotheses about what may set the practice apart in the two contexts. The next section, ‘Questions and Research Design’, discusses the research design and the three questions addressed by this article: *Why* did political elites in Iceland adopt such a comprehensive range of mechanisms? *How* did they resemble and diverge from paradigmatic transitional justice mechanisms? And finally, *what* lessons do the successes and flaws of the mechanisms adopted in Iceland hold for future practice? The section also reflects on the risk of conceptual stretching inherent in maintaining that Iceland’s experiences provide evidence for the expansion of the transitional justice framework. The final two sections explore the practice of transitional justice in Iceland. ‘Adoption after a Critical Juncture’ explains the ground conditions at the time of collapse and the rationales guiding the adoption of the mechanisms, while ‘Mechanisms in Motion’ shows how their implementation played out. The article concludes by evaluating the success and the flaws of these mechanisms. As will be shown, transitional justice mechanisms can be used to keep alive –institutionalize – the demands for truth, accountability, reparations and reform that arise after an economic crisis in a democratic state. The main takeaway is that political elites should not put off the deployment of transitional justice mechanisms after an economic crisis –they need to act and act fast.

## 2.1 APPLYING TRANSITIONAL JUSTICE TO ECONOMIC CRISIS

The aftermath of the Great Recession has been dominated by forward-looking arguments over how to secure economic recovery. We have however, also witnessed the appearance of a range of mechanisms deployed by political elites in their attempts to deal with the past. Formal truth-seeking regarding what went wrong was handed

over to *truth commissions* in Iceland, Greece, and Ireland (Kovras, McDaid, Hjalmarsson, 2018). *Prosecutions* for economic crimes have been vigorously and successfully pursued in Iceland and Spain, and with less vigour and success in Portugal, Ireland and Cyprus (Kovras & Pagliari, 2020). In response to a crisis with its roots in a housing bubble, the authorities in Iceland, Ireland, and Latvia supported *reparative* household debt programs of varying generosity for the households worst hit (IMF, 2012; Bohle, 2018). And finally, the Great Recession ignited *constitutional reform* processes in Iceland, Ireland, Spain, Portugal, Italy, and Greece (Contiades, 2016).

Until now, the mechanisms described above and deployed by European states have been described individually or through comparative studies of one or other mechanism deployed in different countries. This paper takes a different approach: a study of the country that deployed the most comprehensive range of mechanisms, namely Iceland. By applying the framework of transitional justice to how Iceland dealt with its economic crisis, the paper uses a well-tested approach in a novel way. Well tested in that the analytical framework is established in the academic literature and has been honed through practice. And novel in the sense that it contributes to a new literature that uses of the framework (Kovras, et al., 2018; Hillard, et al., 2020; Ingimundarson, 2016) to assess how established democracies can deal with the past of an economic crisis.

### *2.1.1 Convergence and divergence*

Economic crises subject established democracies to ruptures of social relations and expose fundamental failures of their economic and political systems. They are watershed events that divide political time into ‘before’ and ‘after’ (Ingimundarson, 2016). The failure of the authorities to protect their citizens from such shocks leaves them with a program of action that responsible politics –and policies –should have rendered unnecessary. Inevitably questions arise, why did this happen, who is accountable, and what is to be done? In short, economic crises challenge the institutional architecture of democratic states. Consequently, political elites face the same dilemma as in post-conflict transitions: is it enough to simply implement

forward-looking policies to secure recovery or do they need to deal with the past in order to move forward, eliciting the divisiveness and political toxins associated with confronting the issue of accountability.

This dilemma is at the crux of the transitional justice framework, and for this study, the framework's usefulness has two central features: its conceptual anchoring in '*critical junctures*' and '*learning from the past*,' and its theorizing on the *mechanisms of transitional justice*.

First, the transitional justice framework is based on the assumption that transitions are 'critical junctures' and that decisions made during transitions can determine the future quality of democratic institutions over the long term (Bermeo, 1992; Diamond, 1999; Sikkink, 2011) and respect for the rule of law (O'Donnell, 2004). Thus, the framework treats learning from the past as an instrument of political, institutional, and legal reform (Kovras, et al., 2018). Equally, in the absence of learning from the past, the critical junctures created by a crisis can lead to 'continuity through and in spite of historical breakpoints' (Streeck & Thelen, 2005: 8) where pre-crisis ideas, interests and policy goals maintain their power and expose societies to the risks of repeating their mistakes and perpetuating the delegitimation of the political body.

A useful feature of the framework is that it understands economic collapses as '*critical junctures*' that are followed by a period of transition: as times when paradoxes and possibilities become visible and when the law and political actors become caught between the 'past and the future, between backward-looking and forward-looking, between retrospective and prospective and between the individual and collective' (Teitel, 2000: 6). As employed [below] the framework views Iceland's economic collapse as a 'critical juncture' that gave way to a transitional experience; it also makes visible the motivations and abilities of political elites to *learn from the past*—that is, through which mechanisms and for what ends.

Second, the transitional justice framework offers established literature on the *transitional justice mechanisms* through which this learning from the past takes place. Namely, *truth commissions* (Brahm, 2007; Hayner, 2010; Wiebelhaus-Brahm, 2010), *prosecutions* (Sikkink, 2011; Scharf, 1996), *reparations* (Roht-Arriaza, 2014; Laplante, 2013), and *constitutional reform* (Teitel, 2000; Calhoun, 2004; Halmai, 2017). Though the context is different (responses to economic crisis, not dealing with the legacies of violent conflict) and the actors different (established democracies, not emerging democracies) the section ‘Mechanisms in Motion’ applies this literature to analyse the dynamics and implications of the use of the mechanisms: they may promote reconciliation but can also exacerbate divisions; more broadly the multiple goals bestowed on them can be complimentary or even irreconcilable (Leebaw, 2008; Van der Merwe, et al., 2009; Olsen, et al., 2010; Thoms, et al., 2010); there are possible sequencing effects; the strength of spoilers matters (Olsen, et al., 2010); and as justice is not cheap, political economy factors can affect the trade-off between economic and justice demands —influencing decisions on what mechanisms are chosen and what resources provided (Elster, 1992; Boettke & Coyne, 2007).

Economic crises in established democracies are not violent conflicts, nor do they call for a change in the form of the government. Therefore, the experiences of democratic states dealing with the legacies of economic crisis can be expected to be different from the post-conflict transitions that are paradigmatic in the transitional justice framework

The economic crimes committed in democracies —and their socioeconomic fallout —pales in comparison with the severe acts of violence, political oppression, and abuse that are the concern of the transitional justice framework. The physical trauma is not existential; the psychological trauma does not leave as deep of a scar; society does not enter the transition hampered by embedded polarisation; political actors are opponents, not enemies; and the international response is not guided by moral and human rights obligations set out in international agreements. Thus it can be anticipated that though victimhood can remain potent for political instrumentalization, it is diffuse and of less personal nature than in paradigmatic

transitions. The violations, economic, also grow more quickly distant as economic recovery takes hold, suggesting that justice comes quickly or not at all. Moreover, external actors stay on the side-lines as they have limited role and motivation in pushing for accountability. However, the scope for political elites to adopt transitional justice mechanisms after the crisis should be greater as political relationships are not as strained.

The democratic character of the state at the onset of the transition is another difference from paradigmatic transitions. Political elites cultured in democratic practices are expected to be more susceptible to the ‘logic of appropriateness’ (March & Simon, 1958; March & Olsen, 1995) where pursuing accountability can be seen as an effort to ‘come clean’ before the wider community. Not only do external actors have limited role and motivation in pushing for accountability after an economic crisis, but any direct intervention would seem inappropriate interference in internal affairs of a justly governed state. And finally, in a democratic state, there is not the same general agreement for the need for a major change in the political order as in paradigmatic transitions –what should an established democracy transition to? The transition is therefore open-ended as opposed to being a process of closure usually marked in post-conflict contexts by free elections and adoption of a new democratic constitution; that is, the transition is one of reform rather than transformation.

### *2.1.2 Innovation in isolation*

Days after the crisis hit Iceland, the government, with cross-party support, began designing two mechanisms with overlapping objectives: to seek the truth and punish those responsible. An independent *truth commission* was mandated to document the causes of the crash, provide recommendations on how to protect the state from a future crisis, and assess the possible culpability of political leaders and senior civil servants. And, an *Office of the Special Prosecutor* was established to investigate and prosecute those responsible for economic crimes committed in the run-up of the crisis. Seen as two sides of the same coin, to seek the truth and establish accountability, both mechanisms proved successful. As the transition progressed, new mechanisms

were adopted. They were not supported by the same cross-party consensus and proved less successful. A trial of the former Prime Minister before a special *High Court of Impeachment* was polarizing and slowed down the nation's healing. *Reparations* and their associated notions of victimhood were instrumentalised by politicians for electoral gains and were wasteful. And, an ambitious *constitutional reform process* that was to usher in a 'New Iceland' –a transformation of the political body –ended in qualified failure.

The mechanisms in Iceland were the result of *innovation in isolation*. Iceland had no previous experience of any of them. As will be shown, they were designed on the spot and appeared one after the other as reactions to the transition.<sup>3</sup> Moreover, they were designed and implemented by domestic elites with little or no foreign influence. The transitional experiences of other countries had no influence on Icelandic political elites, nor did those designing and implementing the new mechanisms seem to be aware of the transitional justice literature –the mechanisms were never spoken of as 'transitional justice mechanisms.' Yet the political elites in Iceland went on to adopt the *holistic approach* that the International Center for Transitional Justice (ICTJ) has advocated for in order to overcome the weaknesses of individual mechanisms. In the ICTJ's formulation, a holistic approach rests on five pillars: *truth recovery*, *accountability*, *reparations*, *institutional reform*, and *reconciliation* (Boraine, 2006). The first four pillars largely mirror the mechanisms this article investigates –namely 'truth commission', 'prosecutions', 'reparations', and 'constitutional reform'. The fifth pillar 'reconciliation', implying restoration of relationships and trust, can be seen as the cumulation of combined work of the four preceding ones.

Set against the Great Recession's dominant narratives of the delegitimised political landscapes and the consequent populist backlash, the emergence of these mechanisms in Iceland and other crisis-hit countries indicates both creativity and potential within democracy for dealing with the consequences of an economic crisis. As such, the deployments of these mechanisms is a reminder that moments of democratic

---

<sup>3</sup> The High Court of Impeachment, had been on the statute books since 1906 though it had never been convened.

emergency can enrich the inventory of democratic possibilities and practices (Gijzenbergh, et al., 2012; Honig, 2009). Again, the deployment of truth commissions, prosecutions, reparations, and constitutional reform are not new to the toolkit of democratic practices. What is new is the emergence of a similar spectrum of mechanisms in an established democracy that is dealing with its past of an economic crisis.

## 2.2 QUESTIONS AND RESEARCH DESIGN

To understand what the Icelandic experience can contribute to the extension of transitional justice practices to economic crises, this paper asks three questions. The first concerns the economic collapse and the conditions and motivations for adoption in Iceland: *Why* did political elites adopt such a comprehensive range of mechanisms? The second concerns the characteristics of the mechanisms: *How* were they implemented, and how did they resemble and diverge from paradigmatic transitional justice mechanisms? And the final question concerns variations in outcomes and the relevance of Iceland's experience: *What* lessons do the successes and flaws of the mechanisms adopted in Iceland hold for future practice? Tied together, the answers to these three questions argue that Iceland's experience should be seen as a transitional experience. That Iceland faced a critical juncture that gave way to a transition where political elites adopted one mechanisms after the other. That the nature and implementation of the mechanism show clear parallels with paradigmatic transitional justice mechanisms. And that the social reckoning in Iceland and how the country learned from its past fuelled a discourse where terms associated with politics of justice, memory and reconciliation were central –further substantiating the value of the framework to analyse and respond to an economic crisis in democratic states.

To answer these questions I carry out process tracing based on sixteen semi-structured interviews with political elites who participated in the design and implementation of the mechanisms. Extensive use is made of official publications, including reports, minutes, parliamentary bills and records, press releases, and speeches as these are the

most reliable sources to understand both the rationale for adoption and the dynamics surrounding the implementation of the mechanisms. This is triangulated with references to mainstream national newspapers, where appropriate, and post-mortems both officially commissioned and unofficial in the form of post factum writings by key actors. For comparative insights, the paper draws on a new Economic and Social Research Council-funded database on the political, legal, criminal, and regulatory policies in six crisis-hit European states.

The Icelandic case calls for a *most crucial case* research design (Eckstein, 1992) as it remains the country that, in response to the Great Recession, adopted and implemented the most comprehensive range of transitional justice mechanisms. It is acknowledged that single case studies allow only for inferences to the case in hand and do not provide generalisable conclusions or predictive power. Moreover, the Icelandic case is open to criticisms of being an extreme case of one. That said, it is a country that was hit by a universal disruption in the global political economy and, in isolation from foreign influence, provided particular and democratic response to a universal event. What was universal was performed in the microcosm of Icelandic conditions, a particular national context for studying how the Great Recession triggered a unique response, and as such, has wider resonance. Specifically, the holistic range of mechanisms adopted in Iceland allows for tracing how the mechanisms may –or may not –contribute to increased accountability. If the impact on accountability is not present or minimal in Iceland, it remains highly unlikely that it will be seen in less proactive countries. Moreover, the use of the transitional framework in studying responses to economic crisis is still in a nascent and exploratory phase –it is a new and fluid phenomenon. Given this virgin territory, a crucial case study of Iceland can stimulate both understandings of the ground conditions for adoption and inform further initial steps in formulating theory that remains open to future refinement with the emergence of new cases and testing against them.



Intellectual opportunity and risk come with challenging assumptions for *what* and for *whom* the transitional justice framework applies. The opportunity is the awareness of connections between phenomena previously thought to be unrelated and the promise it brings while broadening the meaning and the range of applications of the framework brings the risk of ‘conceptual stretching’ (Satori, 1970). Stretching as (1) the concern is not violent conflict and gross violations of civil and political rights but that of economic crisis and its societal fallout (2) the transition under study is not a political transition from authoritarianism to democracy, but a transition where the starting point is a democracy and therefore lacks unambiguous markers that represent the end the transition process.

Already these boundaries are being pushed back. There is an established body of work within transitional justice that criticizes the frameworks legalistic bias towards civil and political rights and past exclusion of issues of socioeconomic wrongs and economic crimes (Carranza, 2008; Cavallaro & Albuja, 2008; Muvingi, 2009). While these concerns are not new, they have taken on increasing prominence as expressed by calls for a *fourth generation* of transitional justice (Sharp, 2013) –to which this paper aligns itself –that stands ready to ‘interrogate the peripheries’ of transitional justice where economic issues have resided. Moreover, when it comes to the framework’s restriction to post-conflict transitions, it is of limited use to shut the stable door after the horse has bolted. Thus far the framework has been applied to contexts that do not involve liberal political transitions (Chad, Ethiopia, Uganda), where there has been no transition (Kenya), in ‘conflicted democracies’ (Colombia, Northern Ireland, Sri Lanka) and in established democracies dealing with past abuse of its indigenous peoples (Australia, Canada).

While the *what* and the *whom* have been pushed back each by its own, they are here pushed simultaneously with two consequences. As our case is an established democracy with a developed economy and dealing with economic crisis, not violations of political and civil rights, the first consequence is that established criticisms of expanding the scope of transitional justice to economic issues ill-apply.

These include concerns about blurring the line between transitional justice and development policy (Mani, 2008); that bringing in the economic overcharges the mandates, responsibilities, and expectations of transitional justice mechanisms already loaded by dealing with gross political and human rights violations (Robinson, 2015: 34); and practical difficulties like the sequencing of economic issues and securing resources for dealing with them in resource-scarce post-conflict zones (Waldorf, 2012). The other consequence is that by pushing both boundaries simultaneously, the framework is stretched into virgin territory. This invites concerns that the distance travelled from the conceptual foundations of transitional justice is too great to render the framework meaningful for the case.

Two steps are taken to meet such concerns. First, the Icelandic case is lodged in the framework's assumptions that transitions are '*critical junctures*' where decisions taken by political elites to '*learn from the past*' have the long-term potential to determine the future quality of democratic institutions. As shown in the following section, 'Adoption after Critical Juncture', the decisions taken by political elites testify to the transitional nature of the period that followed Iceland's economic meltdown. That this was not a time of 'ordinary justice' as in response to the crisis and learn from the past political elites adopted a raft of mechanisms that were unprecedented in the country's political history. The second step is to weigh up how the mechanisms compare to the framework's theorizing on *transitional justice mechanisms*. The 'Mechanisms in Motion' section, begins with summing up characteristics of the framework's theorizing on individual transitional justice mechanisms; an evaluation provided on how Icelandic mechanisms hold up to the comparison, and lastly, any divergences that stem from the nature of the critical juncture (economic crisis) and the nature of the case (an established democratic state) are brought forward.

Moreover, the nature of the design and adoption of the mechanisms in Iceland – through *innovation in isolation* – tells a story not only of what happened in Iceland but also a story of the robustness of the transitional justice framework. Instead of seeing the idiosyncrasies of the Icelandic case as a concern of distance travelled to far, what

is proposed here is that by discovering the wheel of transitional justice in their isolation, political elites in Iceland were enacting the intrinsic democratic attributes of the transitional justice framework: to respond to loss of legitimacy through truth-seeking; to counter impunity and advance individual accountability through prosecutions; to address victimhood through reparations; to outline institutional responsibilities through constitutional reform; and to facilitate societal reconciliation. That Iceland's critical juncture and adoption of mechanisms in response –to which we turn now –do not stretch but rather confirms, by the isolation the innovation took place, both the framework's conceptual foundations as an inherently democratic response to a difficult past, and the resilience of its prescriptions.

### 2.3 ADOPTION AFTER A CRITICAL JUNCTURE

Iceland's October 2008 crisis came swiftly. Unlike in other crisis-hit states where the focus was on keeping the banks on life support, Iceland's three major banks collapsed within a week. This meant that the IMF bailout and conditionalities did not arrive until after the fact. Moreover, when recovery efforts began, Iceland's old banking system lay on the autopsy table, and a new system had to be built on its ruins. The crisis also struck hard. The three major banks that collapsed were 97 percent of the banking system (Johnsen, 2014). Iceland's inward-looking banking system had been privatized five years earlier in a process that led to accusations of political favouritism and saw ownership of the banks transferred to local investors with no international banking experience. During these five years, Iceland's new bankers made unsparing use of easy access to foreign credit and the free flow of capital within the European Economic Area (EEA). The three largest banks ballooned, and total assets of the banking system rose from 174% of GDP at the end of 2003 to around 1000% of GDP at the time of collapse (Benediktsdottir, et al., 2011). This made Iceland's banking sector the largest banking sector relative to GDP of any country in the world (ahead of Switzerland's which had a balance sheet of about eight times its GDP accumulated over centuries) and the combined bankruptcies of the three banks –estimated at

US\$155 billion –became the third-largest corporate bankruptcy on record, behind Lehman Brothers and Washington Mutual (Benediktsdottir, et al., 2017).

The impact was overwhelming. Over 75% of the stock market was wiped out in the first two weeks (Benediktsdottir, et al., 2011: 185). The onshore foreign exchange market dried up, and the Icelandic krona depreciated by more than 70% in offshore markets (IMF, 2008: 5). External payment systems were disrupted; inflation shot up to 18%, and interest rates were raised to a staggering 18.25% (IMF, 2009: 4). The indexation of mortgages to the consumer price index and a crash in real estate prices caused 38% of households to go into technical bankruptcy (IMF, 2012: 104). With the country's major companies facing bankruptcy and households drowning in debt, the real economy was severely disrupted. The Icelandic authorities, perceived as reneging on their international obligations, became increasingly isolated abroad or met with outright hostility, witnessed by the UK's use of terrorist legislation to freeze Icelandic assets in the UK. A decision that placed the government of a fellow NATO member on a list together with the world's most notorious terrorist organizations.

The authorities' capacities were severely stretched, and fires were burning in all corners. They needed, among other pressing tasks, to ensure that the economy did not grind to a complete halt; draft a budget with hard-hitting cuts; start to rebuild the financial sector; deal with hardening international disputes; negotiate a program with the IMF; design and implement capital controls; and deal with international creditors who descended on the country on a flotilla of private jets and whose demands threatened the foundations of the Icelandic welfare state. Uncertainty was pervasive, rumours wild, and as the first country to go under after the fall of Lehman Brothers Iceland's dramatic meltdown became an international news story of how one of the most well to do and well-educated nations in the world (at the time topping the United Nation's Human Development Index) had 'organized themselves to commit one of the single greatest acts of madness in financial history' (Lewis, 2009: 203).

The failure of Iceland's financial sector was plain for all to see, and Iceland's political system was facing an unprecedented program of action. While the nation was still in shock, glued to screens in disbelief as the crisis unfolded with ever more fantastic revelations, the incumbent centre-right government enjoyed a few months stay of execution with polls showing that trust in all cabinet ministers, except the minister of finance, actually rose. (They collapsed a few months later (Gallup, 2008)). In the wake of the crash the adage that 'nothing is more unifying than a crisis' seemed to apply.

At this 'critical juncture', the authorities took a decision that turned out to be decisive: they announced, quickly and pre-emptively, that the Crash would be investigated and possible crimes prosecuted. Within two months and with broad cross-party support, the incumbent (centre-right) government had pushed through bills establishing two new mechanisms: an Office of a Special Prosecutor (OSP) and a Special Investigation Commission (SIC) to be appointed by parliament. As the implementation played out, these two mechanisms sustained a high degree of cross-party support, despite critical elections and changes in government, and went on to provide the strongest response to the questions: why did this happen, who is accountable, and what is to be done?

The initial shock of October 2008 soon turned to anger, and in January 2009, Reykjavik was inundated with protest, the so-called Pots and Pans Revolution. The government framed the Crash as having been caused mainly by external events –the global crisis –and by the reckless behaviour of Iceland's business 'Vikings', which had made Iceland vulnerable to the global financial storm. In other words, not by the government. This framing became increasingly difficult to maintain as the picture emerged of a thoroughly corrupt financial system, and the government coalition of the conservatives and the junior partner social democrats became beset with dysfunction and inertia. The counter-narrative, which emerged from the Left and from activists across the political spectrum, was that the Crash was a manifestation of underlying problems in Iceland's democracy and government, that it was first and

foremost a local, as opposed to a global, problem. This framing resonated louder with how Icelanders shared and taken-for-granted reality had splintered.

Things came to a head in late January 2009. Imitating South American *cacerolazo* demonstrations, protestors banged on pots and pans, demanding the resignation of the ruling government and the heads of the Central Bank and Financial Supervisory Authority. They sought a clean break, out with the old and in with the new, with respect to people as well as political practices. This framing was distilled by demands for a 'New Iceland'. Though sharing the Right's disdain for the business 'Vikings', and a thirst to bring them to justice, the 'New Iceland' framing saw the Crash as a critical juncture for Iceland's politics and society. After six days of protests that turned increasingly violent and saw police deploying batons and tear gas (for the first time since 1949 when Iceland joined NATO) to disperse crowds, the government resigned and the sense of civil unrest and disorder that had permeated Reykjavik abated.

The fall of the government and subsequent elections paved the way for Iceland's first exclusively left-wing government of Social Democrats and Left-Greens. The new government painted a moralistic picture of Iceland that had lost its way, both in society and politics, and maintained that what was needed was a return to the principles of a Nordic welfare state and collective responsibility (Prime Minister's Office, 2009). This necessitated an honest account of what went wrong, accountability for bankers and people in high office and –in response to demands for democratic renewal and the need to restore faith in political institutions, as well as being an opportunity for the first purely left-wing government to re-order the fundamentals of Icelandic politics –a rewriting of the constitution. More urgently, repairing the dire financial condition of Icelandic households, almost half being mired in debt, became one of the new government's most pressing tasks.

The SIC and the OSP, initiated by the previous government, continued to enjoy strong cross-party support. The same did not apply to the third mechanism –a constitutional reform or the fourth –bringing government officials before a High

Court of Impeachment. Growing political polarization, exacerbated by the left-wing government's decision to impeach the former Prime Minister, distorted the process of constitutional reform. In addition, the left-wing government's emphasis on providing financial assistance to the hardest-hit households –who were perceived as having been most reckless in the years before the Crash –created a sense of injustice and victimhood that paved the way for a new centre-right government in 2013, one that promised across-the-board reparations, generous but controversial, the fifth mechanism deployed in Iceland in dealing with the past of its economic crisis.

**Table 6.** Adoption of mechanisms in Iceland

	<b>Innovation</b>	<b>Early/Late</b>	<b>Before or After Critical Elections</b>	<b>Cross-Party Consensus or Politicized</b>	<b>Cost (EUR)</b>
<b>Truth Commission (SIC)</b>	Yes	Early (2008)	Before	Consensus	3m
<b>Special Prosecutor (OSP)</b>	Yes	Early (2008)	Before	Consensus	47m
<b>High Court of Impeachment</b>	No	Late (2010)	After one	Politicized	1m
<b>Reparations</b>	Yes	Late (2013)	After two	Politicized	1bn
<b>Constitutional Reform</b>	Yes	Late (2010)	After one	Politicized	11m

The deployment of these mechanisms testifies to the transitional nature of the period after Iceland's economic meltdown. As Furlas (2015: 115) points out, 'if experience is transitional and marked by alterity, then collective and ideal value concepts, like justice –if it is to adequately and legitimately apply to social-political life –cannot be treated as static.' Indeed, this was not a time of 'ordinary justice' in Iceland as political elites adopted a range of mechanisms that was unprecedented in the country's political history, in their efforts to deal with the past. Reasons for why political elites responded in this way to the critical juncture are found in the nature of the crisis (the

sense of uniqueness and vulnerability it created), the ground conditions (specifically, high political trust) when the crisis hit, and lastly in the freedom from restraints (both external and domestic) enjoyed by Icelandic political elites.

### *2.3.1 The nature of the crisis: 'Put it in a box so we could focus on surviving'.*

Iceland's crisis came to be perceived as unique. Icelanders saw that though other countries were experiencing dislocations, theirs was the only one to lose its entire banking system. In this small nation, with no standing army, no close neighbours, no shelter from EU membership or assistance from the US (a once-close ally), the sense of vulnerability was compounded by: hardening international disputes that threatened the state's economic viability; the country's associated terrorist listing in the UK; the overheated rhetoric in international press of the perceived incompetence of the authorities and what hardships awaited; and the perceived erosion of economic sovereignty under the IMF program. The perception was that Iceland was alone, in the roughest of seas, up in the icy North Atlantic, and the ship was sinking. It was a time of metaphors.

When political elites explained why Iceland adopted the SIC and OSP mechanisms so quickly, their responses were variations on: '[the situation] was so outrageous that something needed to be done' (interview, Sigríður Friðjónsdóttir, State Prosecutor, Reykjavik, 8 December 2016) or 'our feeling was that we were dealing with a situation without precedents and completely unique' (interview, Birgir Ármannsson, Chair of Parliament's General Committee, Reykjavik, 4 February 2016). In short, a perceived inevitability that an unprecedented crisis required unprecedented measures, or as a leading opposition leader framed it, 'Geir Haarde [the Prime Minister at the time] showed considerable maturity and realised this needed to be done. The events were of such magnitude that there would never be any agreement or reconciliation unless they were thoroughly investigated' (interview, Steingrímur J. Sigfússon, Leader of the Left Green Movement, Reykjavik, 15 December 2015).



Additionally, and connected to the nature of the crisis, the bodies were on the table. Iceland's three banks were in winding-up proceedings, and autopsies could be performed. This gave political elites room for manoeuvre. There was not the same concern for banking secrecy that there would be if they were still in operation. Nor was there the fear that investigations or prosecutions might undermine trust in the banks. Nor, also, was there the prospect of bankers mounting institutional resistance –via their banks –against ongoing investigations. The path was relatively clear.

A possible explanation for the rapid adoption of the SIC and the OSP is that these were self-serving acts intended to release pressure from the street and give the incumbent government a better chance of political survival. The two mechanisms were, however, announced and adopted before shock turned to anger and before popular protest broke out. Moreover, the debates on adoption were not adversarial or coloured by blame games. The incumbent centre-right government and opposition held hands in the process, agreeing that the design and deployment of the mechanisms would proceed on the basis of cross-party support and that political elites' own accountability would be investigated and addressed. Importantly, the nature of the crisis also created a uniquely practical dimension to the swift adoption of the truth commission and the Special Prosecutor. Describing the scramble in the wake of the crash, the Chair of Parliament's General Committee (responsible for the passage of both mechanisms through parliament) said, 'political leaders who are at the table when we are preparing the bills had their minds fixed on the fires that were burning' and though they realized that there was a strong need to establish the mechanisms 'of most importance was to disconnect it from the daily political strife, so that the energy of us in Parliament and in government would not be spent at, this crucial time, about arguing what had caused the Crash, but rather try to create some kind of path for this. Put it in a box so we could continue to focus on surviving' (interview, Birgir Ármannsson, Reykjavik, 4 February 2016).

The nature of the crisis was also instrumental in the adoption of constitutional reform and reparations mechanisms. The shock of the crisis created, particularly on the Left,

open public support for the notion that the events were of such magnitude that they called for a new contract between the people and power holders. Not just amending the constitution, but composing a new one through an innovative participatory process that kept politicians out of the drafting process. The sharp rise in household debt that came with the crisis and put near to every other mortgage underwater (IMF, 2012) created a sense of lingering victimhood, which was later harnessed by politicians promising reparations by way of across-the-board debt write-downs for all households. Crucially, however, the mechanisms that were later adopted did not enjoy the same cross-party support and had more to do with creating a favourable narrative (constitutional reform), blame games (High Court of Impeachment) and electoral gains (reparations) than learning from past institutional failures and rebuild the legitimacy of the political system. To account for the divergences between the mechanisms adopted early and those adopted later, explanations can be found conditions on the ground when the crisis hit and how those conditions changed as the transition progressed.

### 2.3.2 *Ground conditions: 'Politics managed to come together' & 'became a mess'.*

A distinguishing feature of the Icelandic case is the high pre-crisis level of political trust. While the Nordics are described as 'high-trusting' countries (Marien, 2011) – Iceland was first among them (see Table 7). Although such quantitative metrics are controversial, they are useful for mapping political trends, and a glance at the table shows that Iceland stands alone with considerably higher levels of trust than its European neighbours. This high level of political trust indicates that political elites would be responsive to the need for accountability after a shock that was set to dent their legitimacy. Moreover, it arguably manifests a well-functioning political culture on the ground when the crisis hit.

As laid forth in Kovras, Hjalmarsson, and McDaid (2018), the high level of political trust locked Icelandic political elites into a logic of *institutional learning* in the immediate aftermath of the economic crisis. This logic of institutional learning posits that political elites, at critical junctures in high trust societies, should be more

responsive to public expectations and calls for accountability. This again motivates elites to learn from institutional failures, and the motivation is largely independent of political considerations and ideology. The need to rebuild trust in institutions and establish accountability is expected to be expressed by elites across the political spectrum, and the twin objectives of securing the long-term legitimacy of the democratic regime and protect institutions in the future trump short-term party-political considerations. Thus, mechanisms that deal with the past and are driven by the objectives of institutional learning are expected to be adopted early after a critical juncture, irrespective of ideological orientation and on a cross-party basis. Moreover, the mechanisms are also expected to be adopted irrespective of the degree of culpability of the incumbent government, as the electoral and legitimacy cost of inaction in a high trust society would be much higher. In short, where there is high political trust political elites should be responsive to the need for accountability and learning from their policy failures.

**Table 7.** Confidence in Parliament, Civil Service, and the Justice System in Iceland from a Comparative Perspective

	European Value Survey waves (EVS)		Net change
	1999-2000	2008-2010	
<b>Confidence in parliament</b>			
<i>Iceland</i>	72%	40%	-32
<i>Other Nordic countries: average</i>	47%	60%	13
<i>EVS average</i>	36%	40%	
<b>Confidence in civil service</b>			
<i>Iceland</i>	56%	61%	5
<i>Other Nordic countries: average</i>	48%	55%	8
<i>EVS average</i>	41%	48%	
<b>Confidence in justice system</b>			
<i>Iceland</i>	74%	68%	-6
<i>Other Nordic countries: average</i>	69%	77%	8
<i>EVS average</i>	46%	49%	

*Note.* Questions: *How much confidence do you have in parliament / civil service / justice system? Is it a great deal, quite a lot, not very much or none at all?* Figure entries are the percentages of 'a great deal' and 'quite a lot'. *Source:* Two waves of EVS, 1999-2010, Quoted from (Vilhelmsdóttir & Kristinsson, 2018: 215)

This logic of institutional learning was on display immediately after the crisis. Political leaders I interviewed reflected fondly on this as a time when ‘politics managed to come together’ (interview, Steingrímur J. Sigfússon, Leader of the Left Green Movement, Reykjavik, 15 December 2015). From the onset of the crisis, the leaders of all political parties attended early morning meetings where the Prime Minister would brief them on the latest developments and seek their advice. There was, for a time, a perception that they were all in this together: all-hands-on-deck. A decision was taken that the adoption of the SIC and the OSP would proceed on the basis of cross-party consensus. In the words of the Speaker of Parliament at the time: ‘we needed to respond sensibly... there was no point going through this in disagreement’ (interview, Sturla Böðvarsson, Reykjavik, 1 December 2015). Moreover, there was a shared perception –independent of political ideologies and political considerations –that the events were of such consequence for the political system that shying away from answering questions such ‘whose fault was it?’, ‘what went wrong?’ and ‘why did our institutions not prevent the disaster?’ was not politically or morally viable. As one senior political advisor to the incumbent government summed it up: ‘It was just the right thing to do; we owed the nation an explanation of what went wrong and what needed to be fixed’ (interview, Krístrún Heimisdóttir, Reykjavik, 26 May 2015).

**Table 8.** Two Types of Learning after Crisis

Type of learning	Objectives	Focus	Timing
Institutional learning	Rebuild trust/legitimacy Protect institutions in the future	Institutional failure	Early after crisis
Instrumental learning	Create favourable political narrative Blame game Electoral gains	Policymaking failure	After critical election (new parties and demise of dominant parties)

*Note.* Quoted from (Kovras, et al., 2018)

Crucially, the cross-party consensus on the SIC and the OSP held from beginning to end, despite critical elections, changes in government, and the arrival of a new post-crash generation of politicians. The consensus bolstered the legitimacy of the mechanisms, ensured that adequate resources were made available for their implementation, and cemented a principle of non-interference by politicians.

The weight of the crisis, however, quickly dislodged the political system. As seen by the EVS data in Table 7, public confidence in parliament almost halved after the crisis, while confidence in the civil service and justice system was more stable. This pattern is confirmed by studies that show that the distrust was directed towards parliamentarians rather than parliament itself—indicating that the erosion of trust was concentrated on the representational side rather than the implementational side (Vilhelmsdóttir & Kristinsson, 2018). Arguably, and as one parliamentarian said, it was Iceland’s good fortune that: ‘thankfully these decisions had been taken so they [the SIC and the OSP] could continue despite that our politics became a mess’ (interview, Birgir Ármannsson, Reykjavik, 4 February 2016).

The shock quickly turned to anger. Popular protest led to elections that brought the country’s first left-wing government to power. What awaited was the unpopular and strenuous clean-up work—all the unavoidable decisions and the discontent they would create. Public trust in parliamentarians fell, as did trust between government and the opposition whose relations became severely strained. The institutional learning that had prevailed until now gave way to *instrumental* objectives of learning as post-crisis governments attempted to create narratives of the causes of the crisis that suited their interests and pointed the finger of blame elsewhere. As described in the following section, ‘Mechanisms in Motion’, these instrumental objectives, and the political discord they begat, characterised the three remaining mechanisms and caused their sub-optimal results. The decision of the newly elected parliament to bring the ex-PM before the High Court of Impeachment created a deep rift in the political class; the constitutional reform mechanism was seen by the Right as an attempt by the Left to reorder the political system; and the reparations mechanism was seen by the Left as

an instrument of the Right to secure electoral gains and red-pencil the governance-related causes of the crisis.

### *2.3.3 Innovation in isolation: 'there were no messages' & 'there were few restraints'.*

A final feature of the adoption of the five mechanisms in Iceland is the isolation it took place in. Being the first casualty of the Great Recession, Iceland was the first country to respond to it with mechanisms that dealt with the past. This early start meant that the experiences of other countries hit by the Great Recession did not influence the adoption and implementation of mechanisms in Iceland. Neither were political elites influenced by external actors providing support to the country after its crisis. In paradigmatic transitions from authoritarianism to democracy, external actors exert influence on the transitional justice process where 'best practices' and external models are pushed on domestic political elites (Nagy, 2008; Skaar & Wiebelhaus-Brahm, 2013). The dominant international actor in Iceland, the IMF, did not take a view on the adoption of the mechanisms, though informally mild concerns were expressed that hard-hitting findings of a truth commission might expose the Treasury to legal risks (anonymous interview, senior member of the SIC, Reykjavik, 5 February 2016). The Speaker of Parliament sent out feelers to the Nordic capitals, which provided about half the financing for the IMF program, asking if they had a view on the adoption of the mechanisms, but 'there were no messages' (interview, Sturla Böðvarsson, Reykjavik, 1 December 2015). The only time when the transitional experience of other countries emerged in the public discussion was early on in the crisis when business 'Vikings', possibly eyeing amnesty, advocated for adopting a Truth and Reconciliation Committee in the South-African mould. The idea had no traction.

What Iceland did, it did in isolation from foreign influence, and the design of all the mechanisms was homegrown. The first draft of the truth commission's (SIC) terms of reference was based on Danish legislation, but that draft was shelved, and the eventual bill establishing the SIC drew solely on Icelandic legal traditions (interview,

Ásmundur Helgason, Director of Parliament's Legal Office, Reykjavik, 15 December 2015). Likewise, the institutional design of the OSP had no foreign influence, and only limited attempts were made to seek capacity building from abroad –to the contrary, with time, it is now European colleagues who are seeking the advice of Icelandic prosecutors (interview, Björn Þorvaldsson, senior prosecutor, Reykjavik, 8 December 2017). The High Court of Impeachment, before which the ex-Prime Minister was tried, was the only mechanism that was on the statute books and was based on legislation passed in 1905, though the court had never before convened. The constitutional reform process was of a uniquely Icelandic design (Elster, 2016), and the reparations mechanisms, an across-the-board write-down of mortgages is singular in modern economic history.

If the shock and vulnerability brought on by the crisis created the need for political elites to deal with the past, and the nature of political trust shaped the logic of the political response, then lastly the lack of external restraints (above) and relative lack of domestic restraints provided political elites with ample space for manoeuvre. Specifically, in Iceland, institutions are small, and institutional resistance is less than in larger countries. The social proximity common to small states grants a level of transparency not afforded to larger states. Moreover, policy making structures are thin, lines of communications are short and relatively horizontal, which makes governance adaptable and not encumbered by tradition or the 'right way' of doing things –providing both space for innovation and swift execution once the will is in place (Thorhallsson, 2013; Corbett & Veenendaal, 2018). As one prosecutor put it, 'when the consensus was in place, then Iceland is small, institutions are small, relationships are close, and the administration is small, and there were few restraints and getting all these mechanisms smoothly up and running' (interview, Finnur Vilhjálmsson, prosecutor, Reykjavik, 6 December 2016).

Freedom from restraints is, however, a double-edged sword and should, in this context, be seen as a dependent variable. It can enable agile responses and innovative solutions, but the lack of tradition and procedural rigidities can lead to

unprofessionalism and ad-hocism. Political elites not encumbered by restraints can promote mechanisms characterised by institutional learning and responsible politics, but they also promote mechanisms characterised instrumental learning and self-serving politics. Just as the freedom from restraints enabled the rapid and professional adoption of the SIC and OSP; the lack of constraints also enabled the adoption of a constitutional reform process whose implementation was blighted by ad-hocism, as well as pushing through reparations that were a product of irresponsible politics and wasteful use of taxpayers funds.

#### *2.3.4 Act and act fast*

Iceland's circumstances explain why its political elites adopted such a comprehensive range of mechanisms to deal with the economic crisis. As the only country to lose its entire banking system, the crisis created a strong sense of uniqueness and vulnerability. The severe impact of the crisis, and the evidence of extreme corruption in the financial system created a critical juncture for a society that considered itself a well-functioning democracy in the Nordic mould, and one in which political trust was among the highest in the world. Additionally, the crisis hit one of the world's smallest of sovereign states whose institutions provided limited restraints on elites as they devised one mechanism after the other to deal with the past of the economic crisis. This confluence of conditions may not be replicated in future economic crises elsewhere. That said, the experience of Iceland holds a lesson for those wanting to advocate for more democratic responses to economic crisis than 'business as usual'.

That lesson concerns how to respond to the Schmittian challenge that is at the crux of major crises, that we cannot afford democratic responses when we need to act decisively and fast. Iceland's political elites answered this challenge by swiftly adopting two novel truth and accountability mechanisms, the SIC and the OSP, as they needed to act and act fast. The uncompromising impact of the crisis played a role, as did the fact that the banks were on the autopsy table and the path for investigations was relatively clear, as did the pragmatism of elites to put these two mechanisms 'into a box' to be opened later. Importantly, the high political trust when the crisis hit



enabled elites to adopt mechanisms characterised by an institutional logic of learning. Indeed, societies that do not enjoy the same level of political trust at the moment of impact –and whose need to learn institutional lessons from their crisis is correspondingly greater –may struggle to resist the temptations to adopt mechanisms that are instrumental and serve party-political purposes. Regardless, the lesson from Iceland remains that it is the immediate aftermath of the economic crisis that represents the best chance of a ‘golden hour’ for adoption. Act and act fast. Act before shock turns to anger, act before the immediate unifying impact of a crisis begins to wear thin, before political trust nosedives, and before critical elections and the inevitable and polarizing pressures brought on by the crisis inflate the temptations of political elites to adopt mechanisms that are instrumental rather than institutional in their logic.

#### 2.4 MECHANISMS IN MOTION

The five mechanisms adopted by Icelandic political elites were never spoken of as being individual components of a larger project of coming to terms with the economic collapse. They were not framed in terms of transitional justice, nor were the experiences of other transitional states used as models for their design and implementation. Their adoption proceeded as the transition progressed, in an environment of *innovation in isolation*, as involuntary reflexes of a society whose democracy had come under unprecedented pressure.

The adoption of such a comprehensive range of mechanisms, one that aligns with the holistic approach advocated as best practice in the field of transitional justice, indicates that Iceland’s economic crisis created similar exigencies for political elites as where *transitional justice mechanisms* are openly utilized: to respond to loss of legitimacy through truth-seeking; to counter impunity and advance individual accountability through prosecutions; to address victimhood through reparations; to outline institutional responsibilities through constitutional reform; and to facilitate societal reconciliation. To assess in what way the mechanisms adopted in Iceland resembled

and in what way they diverged from paradigmatic transitional justice mechanisms, we now turn to how their implementation in Iceland played out.

#### *2.4.1 The Truth Commission*

In the transitional justice literature, truth commissions are recognised as establishing a simplified yet authoritative narratives of the causes of crisis that can be easily understood by the general public. They are backward-looking mechanisms that document broad patterns of political, economic, or institutional failure; their mandate is restricted in time, and they are vested with investigative powers. They require significant political will to implement and are generally not effective unless the commissioners (usually experts, including judicial authorities, academics, and public administrators) are truly independent. The key concern and objective of their final report are to convert the identified failures into policy recommendations (Freeman, 2006; Hayner, 1994; Wiebelhaus-Brahm, 2010). Iceland's truth commission, the Special Investigation Commission (SIC), exemplifies this format.

The parliament-appointed but independent SIC had a clear truth-seeking mandate and established an authoritative account of the crisis. Moreover, the decision to establish the SIC was swiftly made by the incumbent government. It was legitimized by an ongoing cross-party consensus; it had a broad truth-seeking mandate; it was independent, headed by professionals representing key investigative institutions, and provided with exceptional investigative authorizations. Its final report provided a detailed narrative of the causes of the crisis, and set out the parameters of a legislative reform agenda as well as setting the stage for the prosecution of the Prime Minister before the High Court of Impeachment.

As Iceland had limited experience of public inquiries, and no laws governing the conduct of such inquiries, a new legislative framework was needed for the investigation. Political leaders agreed that establishing that framework and the terms of reference of the SIC, as well as the selection of its commissioners, would proceed on a cross-party consensus, highlighting the priority of restoring the legitimacy of the

political system (Kovras, et al., 2018). The Icelandic SIC became the first official public inquiry established in response to the Great Recession, and the only inquiry established by the incumbent political parties. That there was a change of government after a critical election just after the SIC began its work in January 2009 further demonstrated the strength of the political will and consensus.

This cross-party consensus, a key distinguishing feature of the SIC process, locked political elites in a virtuous cycle that held throughout the drafting and approval of the bill establishing the SIC, in the follow-up activities of a cross-party parliamentary committee tasked with extracting lessons from the SIC report, and in the unanimous passing of the subsequent parliamentary resolution (no. 29/138 of 28. September 2010) that set out a legislative reform agenda based on the findings of the SIC. Ten years after the publication of the report, this virtuous cycle was still present as the fourth government coalition since Crash prepared an extensive assessment –in response to opposition requests –of how the authorities had responded to the SIC’s recommendations (Prime Minister's Office, 2020).

As the SIC’s primary objective was to reinstate trust in state institutions fractured by the crisis, its mandate and scope were correspondingly broad, namely to:

*[S]eek the truth behind the events leading to, and the causes of, the downfall of the Icelandic banks in October 2008, and related events, [to] assess whether mistakes or negligence occurred in the course of the implementation of the laws and other rules regulating and providing for control of the Icelandic financial sector [and to determine] what persons may be responsible (Althingi, 2008)*

All political parties agreed and realised that for the SIC not to be seen as a whitewash of the political elite, the scope of the investigation not only needed to be open-ended but would also need to address the personal responsibility of cabinet minister and senior government officials, though with the understanding that the decision to bring politicians before courts would be in the hands of Parliament.

In an effort to bolster the independence and public credibility of the SIC the party leaders agreed in their negotiations to appoint commissioners who were seen as being irreproachable professionals, outside the grind of daily politics and reflecting key investigative institutions of the country: a Supreme Court judge, the Parliamentary Ombudsman, and an Icelandic-born Yale economist with banking expertise.

The commissioners were given exceptional investigative powers. These included, but were not limited to, subpoenaing witnesses, seizing evidence and searching premises. Obstructing the investigation was made punishable by up to two years' imprisonment. Crucial for the SIC's successful investigation was that the banks were under winding-up procedures when the investigation began—they were no longer operating as banks, their owners had lost control, their senior management had been removed. This meant that investigations would not interfere with their operations, nor was there the prospect of bankers mounting institutional resistance against the investigation. Moreover, the wide authorizations given to the SIC gave them access to millions of data points (including financial transactions, electronic communications, recorded phone calls, and legal documents) from within the failed banks, as well as from public institutions such as the tax authorities (including all the tax returns submitted for the last ten years) the central bank, the financial supervisory authority, and ministries. This wealth of information allowed the commissioners to reconstruct broad patterns of activity in the lead up to the crisis, as well as understanding the more intimate dynamics of specific decisions.

Ultimately, the SIC interviewed 147 witnesses (SIC, 2010). The proceedings took place behind closed doors, and witnesses were given guarantees that statements made to the commission could not be used against them in any courts. This was to make participants feel comfortable enough to share their knowledge candidly and to avoid responses intended to shift responsibility (Kovras, et al., 2018). In some cases, at the end of the interview, the microphones were turned off, and witnesses were encouraged to talk 'off the record' (anonymous interview, senior SIC researcher, Reykjavik, 30 November 2015). By conducting the interviews in this way, the SIC

increased the potential for learning and showed that identifying failures and learning from them was a guiding principle. The diffuse victimhood created by economic crimes arguably did not entail the same need as in post-conflict transitions to publicly air witness statements and respond to victims' experiences. The SIC, however, responded to this and bolstered its credibility in the public eye –often to the unpleasant surprise of the witnesses –when it included in its final report extended verbatim excerpts of the testimonies, including some that were disarmingly comical or distressingly blunt. The inclusion of these excerpts gave the report an engaging narrative quality. Because so many individuals were quoted, it also served the purpose of reducing the stigma, in such a small society, of having one's name mentioned in the report.

In April 2010, fifteen months after it began its investigation and five months after its initial deadline, the SIC delivered its report to Parliament, detailing the economic, political, and institutional failures in the run-up to the collapse.

Its main findings (SIC, 2010) were that explanations for the collapse of the banks were first and foremost to be found in their rapid expansion and subsequent size, facilitated by easy access to European financial markets through the EEA Agreement. Moreover, large shareholders had abnormal access to credit at the banks they owned and lending to them had exceeded the banks' Tier 1 Capital. The boundaries between the interests of the banks and those of their largest shareholders and clients were blurred, and operations of the banks were characterised by maximising their interest rather than the interest of all shareholders. Furthermore, extensive and opaque cross-ownership structures of the Icelandic financial system by highly leveraged entities, as well as the substantial cross-financing of the banks through ownership of each-others' shares, concentrated the systemic risk exposure of the Icelandic banks at dangerous levels.

The SIC also found fault with the actions and responses of the authorities. The resources and capacity given to supervisory authorities did not grow in proportion to the banks, and supervisory practices did not keep up with the rapid changes and

internationalisation of banks' operations. Oversight was inadequate, and there was regulatory capture. When the banking system had become too large relative to the size of the economy in 2006 or sooner, the authorities should have taken action but failed to act in a decisive way to shrink the balance sheets of the banks and or push them to move their headquarters abroad. On the contrary, government policy was to encourage financial activities to grow domestically and into new fields of competition. Moreover, fiscal and monetary policy was found to have failed to address economic fluctuations, overexpansion, and growing imbalances in the economy. When the situation had become dire in early 2008, the SIC found that the authorities responded in an unfocused way, ministers were found to have concentrated too much on the image crisis facing Iceland's financial institutions and not enough on solving their problems.

In response to the personal accountability of ministers and senior officials, the SIC found the former Prime Minister and two other ministers (finance and business affairs) had shown negligence by omitting to respond appropriately to the impending danger. The SIC also found that the three Central Bank governors and the director of the financial supervisory authority had also shown negligence in the discharge of their duties. The SIC was not expected to address possible criminal conduct within the banks, but handed in a report to the State Prosecutor detailing findings that were thought to be relevant to possible future criminal investigations and prosecutions.

Additionally, a novel three-person Working Group on Ethics, a sub-committee established in the SIC's terms of reference, investigated the sociological and ethical aspects of the causes and events leading up to the crisis. The working group mined the SIC's findings and also investigated its own questions relating to corporate culture in the banks, the role of media, academia, gender, and what elements in Iceland's political culture had facilitated the build-up to the crisis. The working group found that the primary problem of the collapse of the financial system lay in their flawed privatization, which allowed inexperienced owners to 'grow' the banks far beyond the authorities' ability to supervise them. The working group also found that the

laissez-faire policy of trusting bankers to regulate themselves proved fatal, and the culture within the banks severely neglected professionalism and good working practices. The main conclusion of the working group was that, though a number of individuals showed negligence and sometimes reprehensible actions, the most important lessons to draw were about Iceland's weak social structures, political culture, and public institutions (Althingi, 2010b).

The SIC report was met with broad public approval. A Gallup poll conducted shortly after the publication showed that 87% were pleased with the report, 12% indifferent, and 1% displeased (Gallup, 2010). The report also became a national bestseller, selling off pallets in bookstores and was an inexpensive and popular present for confirmation children who were going through their rite of passage that Easter. It is however, unlikely that many readers waded through all in nine volumes and 2.300 pages.

Political leaders of all stripes received the findings of the report with sober acceptance. The Prime Minister stated that the report had delivered a 'harsh judgment' of the political system. Adding that Icelanders were full of 'righteous anger for good reasons' and that a 'fair reckoning' was the 'joint will' of Icelanders and their politicians, that now was the time to 'heal what is broken, clean what is infected and use the report as a tool of healing for society' (Sigurdardottir, 2010). The leader of the conservative party, the party perceived as most responsible for the crisis, called on politicians to rise to the 'nation's demand' to draw 'joint lessons' from the report and use it 'constructively to reconstruct our society and ensure that history does not repeat itself' (Benediktsson, 2010). Unanimously, parliamentarians adopted a resolution (no. 29/138 of 28. September 2010) a *mea-culpa* stating that the report was a 'testimony' of the failures of Icelandic politics and economy, that the report should be used as a 'guiding light' and that politicians should 'look critically at their own actions and use the opportunity that the report provides to improve our society'.

In the ten years that have passed from the SIC report's publication, four different coalition governments have actively implemented the SIC's recommendation—a sign of the strength of the cross-political support for the process. In the government's own assessment over 90% of the 249 recommendations that the SIC made have now been implemented (Prime Minister's Office, 2020). These include a new law (Act no. 155/2012) that sets clear rules and conditions for the privatisation of state-owned assets in financial institutions. In a further effort to address the root causes of the crisis, the adoption process of EU/EEA directives on financial markets has been overhauled (Prime Minister's Office, 2020: 203). To prevent the re-emergence of the opaque cross-ownership structures that characterised the financial system, there is now in place a statutory National Credit Register (Act no. 75/2010) that provides the data needed to assess connected lending and analyse systemic risk. Other notable measures taken in response to the SIC's recommendations include the prohibition of the preferential loan agreement terms that bankers and large shareholders used to receive (FME, 2011a); and new incentive schemes for banks' employees that impose stricter conditions than are imposed under European rules (Cullen & Johnsen, 2015).

Wide-ranging reforms have also been made of the political system as a result of the SIC experience. Chief among these reforms is the overhaul of the Act on Government Offices (no. 115/2011) which reshaped the exercise of executive powers in Iceland. There is now a clear setting of responsibilities between ministries, which was previously missing and hampered the crisis response; the governance and oversight responsibilities of ministers have been tightened; permanent ministerial committees on economic affairs and public finances were established to enhance co-ordination and emergency preparedness. The Act also addresses deficiencies identified by the SIC in the civil service, including by reforming record keeping of both formal and informal communications, and by establishing evaluation committees for recruitment of senior civil servants to ward against political nepotism. The SIC's findings also led to wide-ranging reforms of Parliament's standing orders (Act no. 84/2011) which strengthened Parliament's oversight role and its independence from the executive branch. Furthermore, codes of conduct were established for cabinet ministers (Act



no. 115/2011) and similar codes of conduct were also created for parliamentarians (Resolution no. 23/145 2016) and senior civil servants (B-410/2012).

As with other successful truth commissions, the SIC report has limited the scope for rewriting history and maintain misleading narratives, [or outright lies,] about the crisis. It provided Icelandic society with a foundational document that offered an accepted and simplified narrative of a complex crisis, providing answers seen as politically and morally sound. Moreover, it managed to give, to a degree, a collective identity to a divided nation and politics (Ingimundarson, 2016), though one where the political left could point to the politicized privatization of the banks and neoliberal liberalization as root causes while the right could focus on the corrupt practices of the business elite and single it out as the main culprit for Iceland's crisis.

Another direct consequence of the SIC experience is that Iceland now has a new legislative framework governing parliamentary appointed investigation committees (Act no. 68/2011). As is well documented in the transitional justice literature, once truth recovery efforts gather pace, the appetite for such efforts only grows stronger. This has been the case in Iceland, and the new legislative framework has already been used to establish investigations into the collapse of Iceland's savings bank system; the public mortgage provider; the Icelandic pension funds; and the privatization of one of the state-owned banks. One of the more lasting achievements of the SIC is that the use of parliamentary investigative committees to establish the truth on political and economic events has entered the sub-consciousness of Icelandic society as an accepted and desirable practice.

Lastly, and contrary to original expectations, the SIC report was of limited use to the investigations and prosecution of the OSP. Though cited in courts (as a reference source for the larger narrative surrounding individual cases), it was not used as evidence in any of the OSP cases. That said, the SIC lifted the veil, giving a damning description of practices in the banks. The consequent acceptance of the broader public of the SIC's findings ensured both a strong momentum for the investigations and

prosecutions of the OSP. It also created considerable public pressure for the OSP to be given the resources needed to hold bankers to account. In this regard, the Icelandic experience indicates the importance of sequencing truth recovery efforts ahead of prosecutions, and the two mechanisms worked together, giving a more complete accounting of the causes and consequences of the economic collapse.

#### *2.4.2 Prosecutions and trials*

Prosecutions and trials provide the most direct form of accountability when dealing with the past. They are usually at the forefront of transitional justice mechanisms – serving as a symbol of a break with a difficult past. They take time and resources as well as political will, which may be lacking if the alleged perpetrators continue to be influential. To overcome these obstacles, prosecutions in transitional justice contexts are often limited to a few individuals perceived as bearing most responsibility for the most serious offences. Unlike the broad narrative provided by truth commissions, prosecutions provide for much narrower and detailed truth recovery as they only address the crimes of individual defendants. However, successful prosecutions demonstrate, and embody accountability. They send a strong social message that criminal acts will not be tolerated, that no-one is above the law. This is an essential underpinning for deterrence against future wrongdoing.

In Iceland, the issue of accountability was addressed by establishing the Office of the Special Prosecutor (OSP), and by indicting the former Prime Minister before the High Court of Impeachment for failing to take actions to head off the coming crisis.

The OSP was effective in establishing personal accountability and challenging the conventional wisdom that no-one gets punished after an economic crisis. The OSP received strong political support and generous budgetary appropriations. It focused its prosecutions against the most senior bankers and their most serious offences, securing convictions of more than thirty bankers. The OSP was given strong investigative powers; like the SIC it also benefited from the fact that Iceland's 'old'

banks were under winding-up procedures. This limited the ability of bankers to mount institutional resistance against the investigations.

The Court of Impeachment, a special tribunal created by Parliament to rule on the responsibility of the former Prime Minister in the run-up to the crisis, was less successful. In the only trial of a western political leader for his pre-crisis conduct, the court acquitted the former Prime Minister of most of the charges. However, it found him guilty of gross negligence for failing to hold official ministerial meetings to inform the cabinet formally of the major danger facing the banks and the State Treasury. More importantly, the trial of the former Prime Minister unnecessarily polarised political debates and left a mark on Iceland's political culture of consensus-building.

#### *Office of the Special Prosecutor (OSP)*

Before the crisis, economic crimes were investigated and prosecuted by the Economic Crimes Unit of the National Commissioner of the Icelandic Police. The unit was understaffed, had limited capacity, and a weak track record. Moreover, economic crimes were not a priority in the judicial system, and the cases that made it to the courts were often dismissed. After the crisis, the authorities had to choose between strengthening the structures in place or to create a new one. Politicians opted for a new structure, which became the Office of the Special Prosecutor (OSP).

Initially, the OSP was given a very short operating life, limited resources, and its mandate was limited to investigating crimes related to the economic crash. All three elements would change. What remained constant were its extensive investigative authorizations. Standard judicial practice in Iceland is that a court order is needed for seizure of evidence. However, the Act establishing the OSP (no. 135/2008) included a clause that obliged institutions under investigation (including the resolution committees of the failed banks) to turn over all data requested by the OSP. The Act also included a novel whistle-blower clause and empowered the OSP to initiate investigations. Just as the SIC, the lifting of banking secrecy guaranteed the OSP's access to millions of data points from the failed banking system, including financial

transactions, loan agreements, email communications, and phone conversations. This allowed the OSP to construct patterns of behaviour and trace down hard evidence of crimes committed. As one senior prosecutor stated, ‘the crimes are in themselves not complex, they are just committed in a complex environment’ (interview, Björn Þorvaldsson, Reykjavik, 8 December 2017).

When it opened its doors on 1 February 2009, the OSP had five members of staff (to be increased to 10). It was given resources to investigate and bring to trial some two to five cases and was expected to cease operations by end year 2009. However, as the scope of the suspected wrongdoing became wider, and after a high profile public appeal in March 2009 by the French Prosecutor Eva Joly (hired by the government to provide advice to the OSP), more resources started to flow to the office. At the peak of its operation in 2012, it employed 110 staff. During its seven years of operation the OSP was provided with 5.9bn ISK (or around 47m EUR) in budget appropriations (Ríkisendurskoðun, 2016: 13), far above and beyond appropriations that had been previously seen in the Icelandic judicial system.

The initial expectation was that investigations would be triggered by the findings of the SIC or started at the OSP’s initiative. In fact, Iceland’s financial service authority (the FME) turned out to be the source of the largest number of cases taken on by the OSP. The main reason was that for crimes under the surveillance jurisdiction of the FME –market manipulation, insider trading, and trading in securities –initial investigations need to be conducted by the FME, which then decides whether to bring the case to the OSP. The FME investigations that were brought to the OSP for further treatment were thorough, and the OSP soon became overburdened with cases coming off the FME’s conveyor belt.

During the investigation phase, the OSP designated well over 300 individuals (Althingi, 2011) as formal suspects, a large number for a small society, or close to 0.1% of the population. The first high profile arrest was made in May 2010 (Financial Times, 2010), a month after the publication of the SIC report and almost sixteen

months after the OSP began operations. The OSP secured its first ruling in April of 2011, in an insider trading case involving the former Permanent Secretary of the Ministry of Finance, the only civil servant to be charged by the OSP. In 2012 and 2013, the stream of cases brought before the courts gradually increased, the largest part involving breaches of fiduciary duty by senior management of the banks and the benefactors of the banks' suspected illegal lending, which included both clients of the banks and bank staff. Though breaches of fiduciary duty featured most prominently, the charge sheets spanned the entire range of financial crimes, including: false disclosures, forgery, embezzlement, accounting irregularities, money laundering, theft and fraud (BIS, 2020: 39). From late 2013 to 2015, the case-load before the Icelandic courts reached its apogee. At the same time, the OSP also prosecuted complex market manipulation cases in which the suspects were the senior management of the three banks, and in one case, also its largest shareholder.

As a reflection of the expertise that had been built up in the OSP, the authorities expanded its mandate in autumn 2011, putting it in charge of investigations and prosecutions of all tax- and economic crimes. Then, at end-2015 –and after two critical elections –the OSP was transformed into a permanent prosecutorial authority, the District Prosecutor, responsible for all prosecutions in Iceland in the first instance.

The OSP received a total of 202 cases of suspected wrongdoing in the run-up to the crisis, of which 84 cases were dropped after preliminary investigations, and further 18 cases dropped after exhaustive investigations. The remaining cases were either sent to other prosecutorial offices (not considered directly related to the crisis) or were merged into larger cases (Morgunbladid, 2018). In total, the OSP issued charges in 24 cases, in many instances with multiple defendants.

By the end of 2019, Icelandic courts had delivered final rulings in 19 cases brought before the courts by the OSP, while five cases remained before appellate courts. Of the 19 cases completed, 14 ended with full or partial sentences, while in five cases, the Supreme Court acquitted all defendants (BIS, 2020: 39). In total Icelandic courts

have handed out over 96 years of prison sentences to 36 individuals (Frettabladid, 2018), numbers that are set to rise further as the final cases reach their conclusion. The sentences have ranged from five to six years of prison time for the CEOs of the three big banks and one of the bank's major shareholders (the penalty framework for economic crimes in Iceland extends to six years of prison time) while lower rank bankers and beneficiaries of illegal lending practices have received shorter, and often partly suspended, sentences.

The lasting legacy of the OSP and its successful prosecution of Iceland's most senior bankers is to establish –in a society where economic crimes were not a priority for the prosecution and were seldom brought before the courts –that no-one is above the law and impunity can not be assumed for white-collar crimes.

The second main achievement is the establishment of a large body of case law. Before the crisis, Icelandic case law was either very limited or non-existing on the most significant clauses under which the bankers were prosecuted. The creation of extensive jurisprudence has been a significant source of learning and has established a deep understanding of criminal clauses related to economic activities and white-collar crimes.

Another impact of the OSP has been the creation of much-needed capacity in the justice system to deal with complex economic crimes. Both in regards to knowledge how to investigate such suspected crimes and how to present them to the courts. Moreover, the strong defenses put up by the defendants put pressure on prosecutors, making them review and improve practices. The challenge, for the future, is how to preserve this enhanced capacity, which resides in individuals as human capital may depreciate when individuals leave their posts.

### *The Court of Impeachment*

In September 2010, the cross-party parliamentary committee appointed to draw lessons from the SIC report and point to ways for reform tabled two parliamentary resolutions. The first (no. 29/138 of 28. September 2010) was adopted unanimously and set out a legislative reform agenda distilled from the SIC's findings. The other (no. 30/138 of 28. September 2010) named four cabinet ministers that Parliament was to vote on if should be brought before the High Court of Impeachment.

The SIC had found three former cabinet ministers (the Prime Minister, the Minister of Finance, and the Minister of Business Affairs) to have shown negligence by omitting to respond appropriately to the impending danger. The cross-party consensus that had hitherto characterised the SIC process broke when five (out of nine) members of the cross-party committee decided to table a resolution that would see these three—plus the former Minister for Foreign Affairs and former leader of the Social Democrats — indicted for gross negligence under the Ministerial Accountability Act, and the constitution. This outcome meant that the whole debate swerved to the apportioning of blame instead of providing a credible evaluation.

After an acrimonious and polarized debate, Parliament by a vote of 33-30 indicted the former Prime Minister on six points of alleged negligence. However, there was no parliamentary majority to indict the other three former Ministers. This was a result no politician of any stripe had anticipated. And it was not welcomed by the general public. [According to the polls] public opinion quickly shifted from strong support for prosecuting all four ministers to only 44% support for continuing with the prosecution of Haarde (Eyjan, 2010).

By indicting Haarde, Parliament activated the High Court of Impeachment for the first time in Iceland's political history. This court is a special tribunal identified in the constitution in a clause on ministerial responsibility and whose terms of reference are based on legislation passed in 1905 and marginally amended in 1963 (Act no. 3/1963). The court was constituted of five members of the Supreme Court plus a

judge of the District Court of Reykjavik and a professor of law at the University of Iceland. The remaining eight judges were lay judges appointed by Parliament on party-political lines. Prosecuting the case on behalf of Parliament was the State Prosecutor.

Haarde submitted a motion for dismissal, and on 3 October 2011, the court dismissed two of the six charges as too nebulous (not having taken unspecified actions and commissioning unspecified analysis to respond to the looming danger). But the court did not dismiss the other four charges. These were his alleged failure to: (1) ensure that the work of a cross-departmental committee on financial stability was effective; (2) take proactive steps to reduce the size of the banking sector; (3) ensure that deposits in a foreign branch of one of Iceland's banks were moved to that bank's UK subsidiary; (4) keep his cabinet informed of key developments during the run-up to the crisis.

The trial saw the who's who of Iceland's pre-crisis politics and finance, one after the other take the witness stand. Witness statements were largely rehearsed finger-pointing exercises. Politicians and civil servants claimed that nothing could have been done to prevent the crisis and bankers could not see that they had done anything wrong. The scant new information that came from the trial, and the rehearsed finger-pointing, seemed to validate the SIC's decision to conduct its interviews behind closed doors.

In its final ruling (Landsdómur no.3/2011), delivered on 24. April 2012, the court unanimously acquitted Haarde of three of the four charges. On the fourth charge (informing cabinet) the majority (five of seven professional judges and four of eight lay judges who voted on party-political lines) found Haarde guilty. Thereby, Haarde became the first and only politician to be found guilty on charges related to events leading up to the Great Recession.



The court held that the lack of ministerial meetings had contributed to the inability to address the looming problems and that, if such a policy had been formulated and followed, it could be argued that the damage caused by the collapse of the banks could have been ameliorated. Though it found Haarde guilty, the court did not hand down a sentence, and it ordered the State Treasury to pay his legal fees.

Haarde appealed the ruling to the European Court of Human Rights (ECHR), citing that the trial had been politicized and unfair. He also maintained that he had, in line with established political practices and culture, kept cabinet ministers informed through informal channels and under the agenda item 'other issues' at cabinet meetings. In a ruling on 23 November 2017 (*Haarde v. Iceland* 66847/12), the ECHR found that the Court of Impeachment trial had met requirements of independence and impartiality, that the arguments of the Court of Impeachment had been sound, and that overall Haarde had received a fair trial.

The trial turned out to be detrimental to Icelandic politics, and it still haunts the political debate. Even members of the opposition parties believe it was a mistake, unnecessarily polarizing, leaving a stain on Iceland's political culture of consensus-building and slowing down the nation's healing. The trial produced little new information on the events leading up to the crash, and its only tangible effect has been improved record keeping of cabinet meetings. The only benefit is a negative one: Iceland's politicians have been given a stark warning of the pitfalls of criminalizing political decision-making in times of crisis.

This experience bears on two issues. First, should the courts hold policy-makers to account for their policies? Second, should courts apportion criminal liability retrospectively based on the consequences of policy actions or omissions? Iceland's experience answers both questions in the negative (see also Hjalmarsson & Kovras, 2017).

### 2.4.3 Reparations

In transitional societies, reparations are intended to recognize and repair harm, acknowledge wrongs, restore what is owed, and broadly make amends. They are also often the most demanded recourse for past wrongs but also difficult to achieve, particularly when there is competition over scarce resources (Segovia, 2006). Reparations bring into focus the definition of victimhood and the related notion of entitlement, and they identify the innocent victims and the guilty perpetrators (Bouris, 2007). Finally, by identifying victims and perpetrators, reparations (and the associated moral discourse) influence both the diagnostic and the prognostic frameworks of why the crisis happened and what should be done about it so society can best move forward (Greiff, 2006; Magarell, 2003)

The question of how to repair the damage inflicted by the crisis on Icelandic households quickly became a dominating issue for the new Left-wing government. Facing intense social pressure; an ever more organized civil society representing homeowners; and some of the largest protests ever seen in Iceland where thousands took to the streets demanding debt relief; the government was under high pressure. The policy debate was framed as a choice between two paths. The first was targeted measures to help those in most need. The second, as advocated by the centre-right opposition, was across-the-board *reparative* write-downs for all households.

Working within the context of an IMF-supported program, the government opted for targeted measures that were seen as entailing less legal and financial risk for the government and being more effective to put households and the economy back on their feet. The smorgasbord of measures that the authorities adopted, increasing in scale and depth as the extent of the problem became clearer, was above and beyond what was provided by other crisis-hit states (IMF, 2012). The measures included: a moratorium on foreclosures; a temporary suspension of debt service for price level and exchange rate indexed loans; payment smoothing; payment mitigation; loan restructuring to 110% LTV; government-funded interest rate subsidies; and the creation of an Office of the Debtor's Ombudsman financed by the banking system and

acting on the behalf of debtors in negotiations with the banks. Much of the cost of these measures was born by the banking system and the foreign creditors of the old banks, who ultimately were perceived as the guilty perpetrators.

Instead of swift across-the-board debt relief, the idea was that case-by-case negotiations would safeguard property rights, target limited resources at those in the direst need of help, and reduce moral hazard. The government resisted using the language of reparations and victimhood, as voiced by political advocates for across-the-board write and by civil society, while staying to its line that of most importance was to strengthen the social safety net and return households to gainful economic activity.

Though arguably effective, these measures took time while the public appetite and pressure for ever more generous offers increased. Enough was never enough. Moreover, widespread rumours of uneven treatment of debtors as well as stories of debtors gaming the measures while living lavish lifestyles created among the public a sense of unfairness. Ultimately, the perception also took hold that by targeting those in most need, the authorities were providing relief to those who had behaved most recklessly in the pre-crash years and were not the innocent victims but irresponsible risk-takers, just like the perpetrators. When the left-wing government neared the end of its term in 2013, the electoral ground was ripe for exploiting this sense of unfairness and perceived victimhood.

One of the central questions in the transitional justice literature on reparations relates to the possible instrumentalization and exploitation of victimhood for political purposes and electoral gains (McGarry & Walklate, 2015). It is well documented that political actors in transitional societies engage in 'transitional justice entrepreneurship' (Madlingozi, 2010), wherein victimhood serves as a key resource in electoral strategies as well as in the reframing of the diagnostic and prognostic frameworks of the crisis.

It was on the back of this kind transitional justice entrepreneurship that the leader of the populist Progressive Party [that served in government with the conservatives from 1995-2007] rode to power. In its 2013 election campaign, the Progressive Party promised to give all households a 20 percent ‘correction’ of the principal of their mortgages, despite the housing market having largely recovered in the five years that had passed from the collapse and household indebtedness having returned to sustainable levels.

In terms of the diagnostic framework of the collapse, what had happened according to the Progressive Party was not that politics and institutions had failed but simply that inflation had spiked, causing unnecessary economic hardships for households. This could be ‘corrected’ by cash handouts –reparations –from the Treasury, that later would be recouped by taxing the creditors of the old banks who were characterized as foreign ‘vultures’. That is, both foreign and responsible for the hardships facing households. For Icelandic society to extract itself from the legacy of the collapse, the prognostic framework, the ‘correction’ emphasised not the need to learn lessons, reform politics and institutions, but that all Icelanders were victims and that if the financial damage would be ‘corrected’ and Icelanders would receive cash in hand (ultimately paid by the guilty foreigners) their future would be bright.

The ‘correction’ was a wasteful measure that disproportionately benefitted high-income households –a shift of wealth from the young and vulnerable groups to the older and the well off (Ministry of Finance, 2017). Assistance received from the earlier, targeted, measures was deducted from the funds homeowners were eligible to receive from the ‘correction’. Moreover, the most vulnerable groups in society, the young, those with low incomes, those fending for themselves on a precarious rental market, did not receive anything from the ‘correction’. Though the transitional justice entrepreneurship of the leader of the Progressive Party secured him the electoral victory needed to form a government, the ‘correction’ failed to translate to any bump in the polls for the party when the government announced the details of the measure (Gallup, 2014), or when it was paid out (Gallup, 2015).

The measures for households, first the targeted and then the reparatory ‘correction’, were instrumental in shaping Iceland’s post-crash narrative. They firmly designated the banking system and the foreign creditors as the guilty perpetrators. Attaching blame to the banking system was supported by the findings of the SIC and the OSP’s prosecutions; attaching it to foreign creditors was supported by the reparation rhetoric from the centre-right.

The critical impact was on Icelanders’ notion of victimhood. As reparations have both practical and legal meaning about who is entitled to material redress, the different approaches brought into sharp focus who were the legitimate and illegitimate victims of the economic collapse and provided different answers to who were the deserving victims. Moreover, they also provided very different answers in regards to the prognostic framework. That is, what role reparations played in extracting society from the legacies of the collapse.

By concentrating scarce resources on those most in need, the left-wing government attempted to practice responsible politics. The objective was to get households that were underwater back into productive economic activity, leading to overall better performance of the economy that would ultimately be to the benefit all. Moreover, the adoption of the measures was an example of responsible politics. Evermore organised civil society organisations succeeded in influencing the measures both politically and legally. Also, when the extent of the problem became clearer, the authorities responded with new measures. However, by targeting those with assets but on the verge of bankruptcy, a perception of unworthy victimhood was created. The more extravagant properties people owned, the higher their debt, and the higher their share of debt relief. This created the perception that those who had behaved most recklessly in the pre-crash years were unworthy victims who were unjustly being rewarded from a pool of scarce resources. That said, the measures were in a macro-economic sense successful. By the time the left-wing government left office the real

estate market had largely recovered, and household indebtedness had reached sustainable levels.

However, a sense of injustice remained. By promising across-the-board ‘correction’ of everyone’s mortgages by 20 percent, the populist Progressive Party reframed the perception of victimhood: all Icelanders were victims and all deserved redress. Ultimately the proposed measure was an oversell that raised expectations and benefitted higher income groups and the old over the more vulnerable and the young. Moreover, the measure was implemented at a considerable cost, nearly 1bn USD (Ministry of Finance, 2017), with limited analysis and regard to the macro-economic impact, and warnings of the measure’s wastefulness from both the Central Bank and the IMF were brushed off.

Most importantly, the ‘correction’ shifted the focus of the redress that society needed from the reform agenda of the previous government to a cash handouts by way of squeezing foreign ‘vulture’ creditors. The most lasting impact of the ‘correction’ was to transmute the post-Crash narrative from one of continuing the legal and institutional reform agenda at home, building a ‘New Iceland’, to one of expansive victimhood created by the actions of foreigners and the banking (not the political) system. In short, instead of political, legal and institutional reforms, the economic collapse could be ‘corrected’ with foreigners’ cash.

#### *2.4.4 Constitutional reform*

Constitutions play an essential role as future-oriented instruments of transition in societies undergoing political upheaval. This was the case in Iceland, where the constitutional reform process was an innovative transition mechanism intended to introduce both political and democratic reforms in response to the economic collapse. Though Iceland was already an established constitutional democracy, the path that the constitutional reform process took is aptly described by the typologies that the transitional justice framework (Teitel, 2000; Calhoun, 2004) proposes for political transitions.

These typologies reflect the power relations at the time when a transition starts. The first type is *rupture*: the outgoing regime is weakened to the point of collapse, and the opposition seizes power dictating the path and terms of the country's constitutional process. The second is *negotiated transition*: the prior regime has not collapsed, and the regime and opposition negotiate the path constitutionalism takes. Finally, the *residual* (Teitel, 2000) or *transformation* (Calhoun, 2004) types are when incumbent leaders try to transform their regime by slowly guiding constitutional change. As will be described below, the Icelandic constitutional process started from the premise of a *rupture* when success depended on a *negotiated transition*. The failure of the process left the fate of constitutional reform in Iceland in the hands of the established political parties, leaving any future reforms to be reforms of *residual* change.

Iceland's constitution, adopted at the foundation of the Republic in 1944, was itself a transitional constitution that came into force during WWII with the expectation that a comprehensive revision would follow. Icelandic political elites never undertook the comprehensive revision, and large parts of the constitution have remained intact since Iceland was given nominal home rule and its first constitution from the King of Denmark in 1874. The constitution, therefore, does not mention key concepts such as 'democracy', 'parliamentary rule', 'nation' or even 'government'. As a consequence, it poorly reflects current realities regarding the work of government and the role of Parliament in supervising the executive, providing political elites with wide interpretative scope (Thorarensen, 2016).

After the economic collapse, and the Pots and Pans Revolution that led to the collapse of the centre-right government, there was deep public anger toward the government and state institutions for their failure to protect the public against the calamities. There was a loss of trust in political parties and elected representatives as concerns their ability to make essential decisions in the public interest. Civil society activity and pressure amplified calls for a 'New Iceland', a call for a new codification of the relationship between citizens and government. The debate on the need to modernize

the constitution was revived, and since the political elite had failed to do so many saw an opportunity to adopt a constitution that would be framed directly by the nation itself.

After the April 2009 election, the new left-wing government emphasized that reforming the constitution was a priority. This was seen as a way to defuse popular anger and restore public faith in political institutions, as well as an opportunity by the country's first purely left-wing government to re-order the framework for Icelandic politics. Reflecting the deep distrust of the political elite the process that was set out was strongly inspired by the idea that this was a time of *rupture* and that citizens should be involved at all stages in the making of a new constitution, while political parties were excluded from the drafting stage.

What resulted was a process that was laudable in the extensive and direct involvement of citizens: two National Forums were convened to identify the underlying values that should frame the new constitution; participants were identified by stratified sample of the national registry; a 25 member Constitutional Assembly was elected from among 523 candidates, not nominated by parties but by individuals; the drafting process was open and transparent, and citizens were encouraged to participate in the proceedings by 'crowdsourcing'; and finally a draft constitution was put to an advisory referendum.

The process was, however, beset by shortcomings, stemming from the same weak policymaking and legislative procedures that the SIC had found characterised Icelandic politics and civil administration (Nordal, 2016). Crucially, the Act setting out the process was vague about defining the task and stipulating who should control the process, about whether the Constitutional Assembly should revise the old constitution or write a new one; and about the relationship between Parliament and the Constitutional Assembly.



Reflecting the activist and *rupture* origins of the process, the citizens elected to the Assembly decided to draft a new constitution instead of revising the old one. They saw themselves as outsiders fighting entrenched elites, an attitude that naturally increased the distrust between them and political elites (Olafsson, 2016). Moreover, the absence of political elites from the early stages of the process and the lack of dialogue and consultation between the elected Assembly members and party politicians dented the legitimacy of the process. Since the old constitution was still in force Parliament was still the ratifying agent: constitutional changes need to be approved by two successive parliaments with general elections in-between. This led to protracted quarrels about the process, accusations from the political Left that the Right was spoiling the process, and from the Right that the Left was using the process to score political points. This quarrelling shifted the focus from the constitutional changes themselves (Nordal, 2016). Given the need for Parliamentary approval a successful constitutional reform would have required a *negotiated transition* between the ‘citizens’ and the political elite. However, this never took place.

Moreover, at every stage in the process, the mandate of the Constitutional Assembly was weakened, as was its ability to claim the mantle of the constituent power in its disputes with the political elite. The turnout for the Constitutional Assembly was far lower than expected, with only 37% casting their ballot when typical turnout in national elections exceeds 80%. Then the Supreme Court invalidated the elections due to flaws in its execution, causing Parliament to appoint the 25 elected candidates to a new body the Constitutional Council –essentially a shift from an independent assembly to a parliamentary appointed committee. When the Constitutional Council finally convened, with its legitimacy in question, cost concerns caused its operating time to be reduced from eighteen months to less than four.

In its short operating time, the Constitutional Council composed a new draft constitution that the 25 members approved unanimously. The draft included radical provisions on referenda and popular initiatives, allowing for ten percent of the electorate to both demand a referendum on bills passed by Parliament, and to table

bills in Parliament. Essentially, the 'New Iceland' was to be one of a hard shift towards direct democracy. The draft constitution also contained provisions that would strengthen Parliament's supervisory control over the executive; there was an expansive new human rights chapter, and new provisions were designed to increase the independence of the courts.

The Constitutional Council submitted the draft constitution to Parliament at the end of July 2011. Uncertainty, however, remained over what to do next. The left-wing coalition referred the draft constitution to Parliament's Constitutional Committee, which did nothing with it for a year. Eventually, a decision was taken to hold an advisory referendum in October 2012 on whether the draft constitution should form the basis of a bill for a new constitution. Turnout was low 49%, but 67% of those who voted were in favour of the question. By this time, only four months remained of the left-wing government's electoral term. After criticisms from both domestic legal experts as well from the Venice Commission (Venice Commission, 2013), it was clear that there was not enough time to make needed changes to the draft and no majority to pass it as it was.

The campaign for and outcome of the 2013 elections showed that the constitutional issue was not a priority for the electorate. The priority was household debt, not 'New Iceland'. The winners of the elections, the Independence Party and the Progressive Party, had been the most ardent opponents of the new constitution. The Constitutional Council's draft was shelved, and the political elite took control of the process. The new government quietly abandoned the constitutional reform process and appointed its own constitutional committee consisting of party political appointees. Three years later, the work of this committee led to an attempt to introduce incremental reforms of the existing constitution. Broad cross-party consensus was set as a pre-condition for any amendments to the constitution. However, the new process collapsed because the anti-system Pirate Party believed that a revision of a few key articles amounted to a betrayal of the 'people's constitution' drafted by the Constitutional Council. At the time of writing, twelve

years after the economic collapse, Iceland's current government is making yet another attempt to reform the constitution, now headlined under the banner of 'Better Iceland'. Gone is the 'New Iceland' of the *rupture*, and any changes made are set to be guided by political elites and be *residual* revisions of the old constitution.

The innovative paths chosen to involve the public in the revision of the constitution had an impact on public awareness of the significance of the constitution, its history, and its possible promise (Thorarensen, 2016). The process also opened the door for vigorous public debates on the core values of society. As such, it gave ordinary citizens both agency and heightened expectations of participation in fundamental decisions concerning the future of the country.

However, the process was triggered by popular anger and a feeling of *rupture* that the economic collapse had caused. This starting point of the process sowed the seeds of both its beauty, the innovative and extensive public involvement, and its downfall, the failure to include political elites in the process, and to treat the process as a *negotiated transition* between citizens and the political elites. Excluding political elites from constitutional reform was bound to fail. Moreover, as time passed, and the initial anger receded as economic conditions improved without any reform of the constitution, the public's enthusiasm for the project waned.

Iceland's constitutional process highlights the transitional nature of Iceland's journey after the economic collapse. The process was intended to lead to a new re-ordering of Icelandic politics, a 'New Iceland', driven by citizens in a direction that would have entailed a hard shift towards direct democracy. However, the process suffered from being too improvised and poorly planned. Arguably an echo of the SIC's finding that weak policy-making and legislative procedures were characteristic of Icelandic politics and public administration—the same characteristics the reform of the constitution was meant to cure (Nordal, 2016). These deficiencies led to endless quarrels about the process itself and shifting the focus from the real substance, the constitutional changes

themselves. Eventually, political elites re-asserted control over the process, and future changes to the constitution are set to be *residual*.

Finally, the process by which a ‘New Iceland’ failed to emerge highlights, as described by Teitel (2000: 210), that constitutionalism at a time when the political order is in flux cannot stand independently from the political order, but is inextricably enmeshed in transitional politics. Ultimately, Iceland’s experiences show that a country’s experience can be transitional even though it does not lead to transformative democratic change.

## 2.5 CONCLUSION: TRANSITIONAL JUSTICE AFTER ECONOMIC CRISIS

*The Icelandic case offers a particular national setting to study how political elites in a democratic state can respond to an economic crisis by dealing with the past and addressing demands for truth, accountability, fairness, and reform. It challenges the notion that ‘impunity’ and ‘business as usual’, with their harmful effects on democratic politics, must necessarily persist after an economic crisis. In Iceland a specific set of conditions led political elites to adopt a comprehensive range of mechanisms to deal with the past. These were: the nature of the crisis and the sense of uniqueness and vulnerability it created; a high degree of political trust when the crisis hit and during its subsequent development; and relative freedom from external and domestic restraints. While such conditions may not be present in future economic crises elsewhere, it are the specificities of how the adoption came about in Iceland –through innovation in isolation –that grant the case a broader relevance. More precisely, its relevance for challenging for *whom* and for *what* the transitional justice framework can apply.*

*The innovation-in-isolation that took place in Iceland illustrates both the robustness of the existing transitional justice framework and the possibility of expanding its scope. As the first casualty of the Great Recession and the first country to respond to it with mechanisms that dealt with the past, Iceland had no models to follow. Nor were its political elites influenced by external actors providing support to the country after its crisis. In their*

isolation, they responded intuitively and innovatively, adopting one unprecedented mechanism after the other as the transition progressed. Eventually, and unbeknownst to them, they ended up adopting the *holistic approach* advocated as best practice in the field of transitional justice. The interest of the Icelandic case is that it shows that an economic crisis in a democratic state can create the same imperatives as are the subject matter of the transitional justice framework. The fact that this happened in an isolated setting, confirms that transitional justice is an inherently democratic response to a critical juncture, and underscores the resilience of its prescriptions. This means that we have an established framework and practice that can guide us on how to keep alive and institutionalize these imperatives and resist the delegitimizing impact that economic crises exert on the democratic polity.

*The holistic range mechanisms adopted in Iceland allows one to discern convergences between transitional justice after economic crisis and after paradigmatic transitions.* The main convergences are threefold. First, the critical juncture of an economic crisis challenges the institutional architecture of the state, and a period of transition follows where political elites become caught between looking to the past and looking to the future. As in paradigmatic transitions, the Icelandic one was not a time of ‘ordinary justice’ because political elites could not resist delving into past failures and just focus on forward-looking policies to stimulate the economic recovery. Dealing with the past was deemed needed in order to move forward. Second, the prescriptions of the transitional justice framework, the *transitional justice mechanisms*, can apply in both form and function to democracies dealing with the past of economic crisis. Third, as in paradigmatic transitions, the Icelandic case shows that transitional justice mechanisms are not always positive in their effect. What matters is how political elites go about *learning from the past*. The mechanisms may promote reconciliation and reform, but when used instrumentally to establish expedient narratives and settle old scores, they may also exacerbate divisions.

*The two successful mechanisms adopted in Iceland, the Special Investigation Committee (SIC) and the Office of the Special Prosecutor (OSP) are examples of best practice in the transitional*

*justice framework*. The SIC had a broad and clear truth-seeking mandate; it was equipped with strong investigative authorizations; it provided a clear account of a complex crisis that could be understood by the public; and it turned past policy failures into institutional lessons that will help protect the country against a repetition of past failures. Like other successful truth commissions, the SIC produced a foundational document that gave a degree of collective identity to a divided nation and limited the scope of permissible lies that could be maintained about the crisis and its causes. Though white-collar crimes are different from violations of political or human rights, the OSP's track record shows that they could be prosecuted successfully. The prosecutions—and conviction—of senior bankers demonstrated, and embodied, accountability, sending a clear signal that no-one is above the law. Moreover, the prosecutions complemented the SIC's broad narrative by providing narrower and more detailed truth recovery relating to the crimes of the bankers. Like the policy lessons from the SIC and the body of law that has been created on economic crimes will remain an important source of learning and precedents, and act as deterrence against future wrongdoing. The successes of the two mechanisms were underpinned by strong investigative authorizations and access to millions of data points from the failed banks, allowing thorough forensic investigations. Of course bankers will contest such access: the Icelandic case shows how much can be achieved when secrecy is lifted, and whom that secrecy ultimately protects. Another necessary condition for success, particularly for the OSP, was ample budgetary support, which allowed even a small country to develop exceptional expertise in white-collar crime investigations and satisfy the often frustrated demand to hold bankers to account. Finally, the Icelandic case highlights the importance of sequencing: truth recovery should precede prosecutions. By lifting the veil on banks' practices, the SIC's findings created momentum and the political conditions for allocating sufficient resources to the OSP. Had the two process proceeded in reverse order or simultaneously bankers might have been in a stronger position to take up more guarded positions and or conceal information.

*In economic crises timing is of the essence.* Unlike paradigmatic transitions where justice can take considerable time to be realized, this analysis shows that in a post-crisis democracy the window of opportunity is short. In democracies, political elites enter a transition caused by economic crisis as opponents, not enemies, and high political trust on the ground when the crisis hits makes them responsive to public expectations that they 'do the right thing' or 'come clean' before the wider community. The first few months after the crisis hit proved to be 'golden hour' for adoption of transitional justice mechanisms in Iceland. Though societies where political trust is lower –and whose need to learn institutional lessons from their economic crisis is correspondingly greater –may find it more challenging to adopt mechanisms guided by an institutional logic of learning, the lesson from Iceland is that delaying adoption will only add to that difficulty. Promise can quickly turn into peril after shock turns to anger, after the unifying impact of the crisis begins to wear thin, after political trust evaporates, and after elections tempt political elites to adopt mechanisms whose objectives are instrumental rather than institutional.

*General points can be made about the unsuitability of prosecuting politicians after an economic crisis and the political potency of economic victimhood.* As it is counter-factual to the case, the Icelandic experience is largely silent on the prospects of institutional logic guiding reparations, constitutional reforms, and trials of politicians. The question therefore remains if these three mechanisms can be useful to deal with the past of economic crisis? The trial of the ex-Prime Minister was the most politically injurious of all five mechanisms adopted in Iceland. It polarized political debates, produced limited new information, and damaged the country's political culture of consensus-building. Clearly, illegal acts such as self-enrichment or political corruption, should be prosecuted. However, prosecuting political leaders, as Iceland did, for alleged policy and procedural oversights shifts accountability for policies away from the ballot box, and to the law. In addition the threat of retro-active criminal liability weakens decision-making in times of crisis when decisiveness is needed, and decisions need to be made based on limited precedent or information. A trial can also legitimise ex post facto rationalisations that are inaccurate, and it may validate populist calls for 'more

heads to roll' (Hjalmarsson & Kovras, 2017). The lesson is not that political elites should be left off the hook. It is that mechanisms like the SIC are better suited to carry out serious investigations that publicly acknowledge the truth about the causes and those responsible for the crisis, and convert those findings into useful lessons. In regard to reparations, the case of Iceland shows the potency of 'transitional justice entrepreneurship' after economic crisis. The left-wing government's policy to rescue households from mass bankruptcies was economically sound, but deaf to the politics of victimhood. Taking advantage, the centre-right government rode to power with reparations that addressed the sense of victimhood, but were economically unsound. The Icelandic case is thus a warning of the political costs of failing to engage with the diffuse victimhood and reparative demands created by economic crisis. Equally, it is a reminder of how easily politicians can take advantage of reparative demands and victimhood by offers of simple solutions and blaming foreigners.

*Iceland's experience shows that transitional justice mechanisms can be used to keep alive –by institutionalizing—demands for truth, accountability, reparations and reform that arise after an economic crisis in a democratic state.* The holistic range of mechanisms adopted and implemented by political elites testifies to this and there were both institutional innovations worthy of attention, as well as mistakes made that should not be emulated. Moreover, the fate of the constitutional reform process shows that a transition in a democracy after economic crisis is one of open-ended reform rather than a process of closure and transformation. Though the political body was not transformed, Iceland's transition was about social reckoning and politics of transitional justice. Terms such as truth, responsibility, culpability and victimhood were all central to Iceland's experiences after the economic crisis. As such, the Icelandic case invites the opportunity to expand the scope of the transitional justice framework to established democracies after economic crisis.



### CHAPTER 3. TRUTH COMMISSIONS AFTER ECONOMIC CRISES: THE IMPACT OF INSTITUTIONAL LEARNING

After fundamental shocks to their economic and political systems the governments of democracies must decide whether and how to address the unavoidable questions of why did this happen, who is accountable, and what is to be done? Is it enough for them to implement forward-looking policies to secure a recovery or must they deal with the past and confront issues of truth-finding and accountability so they can move forward?

This article looks at the aftermath of the Great Recession –when one of the hardest-hit countries, Iceland, deployed a Truth Commissions (TC) to identify the causes of its economic crisis. TCs are extra-ordinary mechanism that can be deployed after a critical juncture in a nation’s life. When they are effective, TCs embody accountability by assessing the established institutional framework, by identifying an agenda of reforms to prevent the repetition of past crises, and by providing the public with an accurate diagnosis of the past –valuable at a time of post-truth politics.

TC are not always effective, however. The other two TCs that were deployed in response to the Great Recession, in Ireland and in Greece, emerged as a result of political elites’ decision to play the blame game. They were used to establish expedient narratives and settle scores (Kovras, McDaid & Hjalmarsson, 2018). To assess TCs usefulness as accountability mechanisms that established democratic states can bring into service, this article provides a crucial case study of the most effective of the three commissions –Iceland’s Special Investigation Committee (SIC) –and asks: *In what way, if any, can a truth commission effectively drive learning and reform in an established democratic state, and what impact can it have?*

This article’s focus on the post-crisis period in an established democratic state sets it apart because TCs are usually associated with the process by which emerging democracies navigate political transitions from repressive rule and deal with legacies of violent conflict. The deployment of TCs in established democratic states in response to political and economic crises is a more recent phenomenon. This means

that, although we have a rich academic literature based on decades of practice and theorizing in emerging democracies, we are just beginning to build our case knowledge of TCs in established democracies and to think through how to assess their impact. Against this backdrop this article has two overlapping aims. The first is to provide a description of a TC process that was effective. This can inform design decisions for future cases. The second is to weigh the possible merits of TCs by providing an assessment of the impact of one that was effective.

The article has six sections. The first, ‘Truth Commissions’, defines TCs and explains their usefulness in times of economic crisis in established democracies. The second shows how the concept of ‘political learning’ can help us understand why and how different types of learning, institutional and instrumental, can emerge from a TCs work. The next section reviews research approaches that are used to assess TCs impact. Expanding on this review, a section on research design sets out a two-phased approach that uses process-tracing to assess how the TC process itself shapes the type of learning that emerges and the impact that it has. The following two sections conduct, in turn, each phase of the impact assessment. The section ‘Mechanism in Motion’ unpacks the TC process in Iceland by analysis of a set of observable indicators and describes the relationship between the conduct of the TC process and the impact it exerts. The ‘Impact’ section traces the impacts of the TC on the financial system, the political system, and the space available for populist politics. The article concludes by assessing what can be learned from the Icelandic experience and what that experience holds for future practice. As will be shown a TC can have a direct impact on the reform of institutions and the quality of democratic practices, and it has the potential to clear and hold space that would otherwise be ripe for populist abuse.

### 3.1 TRUTH COMMISSIONS

TCs are used to promote accountability when it is not possible to do so through normal channels or when such channels are perceived to be compromised —usually because political elites are seen as too implicated in past events. They derive their legitimacy from the state, which sets them up and empowers them, and more

importantly from their independence of the very state institutions that set them up. Their independence from state institutions and from political interference is their most valuable asset. The commissions are temporary bodies, focused on the past, and tasked to investigate and document patterns of failure rather than a specific event (Freeman, 2006; Hayner, 1994; Wiebelhaus-Brahm, 2010). To that end, they are usually given specific powers such as subpoenaing and taking testimonies from witnesses, the right to search and seize information, conduct forensic investigations, and provide witness and whistle-blower protection. At the end of the process, they prepare a final report with their findings and recommend measures to prevent repetition and to improve the quality of democratic governance.

TCs were first used in Latin America where numerous countries created them in the context of their democratic transitions in the 1980s and 1990s (Kovras, 2017). As the third wave of democratization came to African and Asian states, so did the practice of deploying TCs (Hayner, 1994). While TCs are seen as a mechanisms that emerging democratic states should deploy to deal with a past of gross human and political violations, their functions have also widened as their use has become more common. They have been deployed to address the abuse of indigenous people in Australia and Canada and they have increasingly been used to analyse economic crimes and socioeconomic change in times of political transitions in emerging democracies (Sharp, 2013; Michalowski, 2014). Most recently, the use of TCs has widened to becoming a response to economic crises in established democratic states (Kovras, et al., 2018).

Though TCs in established democratic states are a new phenomenon, the use of formal truth-finding mechanisms is not. Executive branch institutions often conduct reviews and establish technical commissions after policy failures, and legislatures often appoint commissions of inquiry (CoI) to address questions about significant events and issues of concern to society. TCs are, however, different from these more conventional mechanisms. First, their mandate and investigative scope is broader. They are tasked with critiquing the institutional framework of the state, not just single issues or the

circumstances of specific events, as is the case for CoI's or the even narrower executive branch reviews of certain aspects of crises, for example the technical exercises carried out by central banks and regulators after the Great Recession. Second, the composition of TCs is also different. They are led by multiple commissioners with a broad range of expertise, for example judicial authorities, academics and public administrators, while CoI's are typically led by a single commissioner, often a judge, which demarcates the analytical gaze of the investigation. Third, TCs are extra-ordinary mechanisms fitted for crises of such magnitude that political exigencies and expediencies inhibit a common understanding within divided political elites about the causes of the crisis and its management. The political elites are too implicated and the public has limited trust in their ability to 'come clean'. TCs are therefore usually empowered with an exceptional degree of independence, political as well as operational, which is a necessary condition for them to be trusted as arbiters of truth. Finally, their primary audience is the public. When a TC is established more is wanted than a recitation of facts and recommendations for future policy that are the domain of ordinary reviews and CoI's. Their task is larger, to convert complex crises and processes hidden from view into authoritative narratives that can be understood by the public. Their function is to empower the citizenry by lifting the veil on what political elites could otherwise dispute or deny.

The commissions in Iceland, Ireland and Greece share features of TCs as described above. They were asked to scrutinize the existing institutional frameworks; they were led by multiple commissioners; all three of them were also vested with independence and (at least theoretical) authority by their respective parliaments, a feature that distinguishes TCs from more commonly used report-producing bodies (Hayner, 1994: 604). While sharing these attributes, the three commissions took different paths that shaped the political learning that emerged and thus their own effectiveness.

### 3.2 POLITICAL LEARNING

In a comparative analysis of the paths taken by the TCs in Iceland, Ireland and Greece, Kovras, McDaid & Hjalmarsson (2018) show that the literature on political learning (see e.g. Bermeo, 1992; Boin & Hart, 2003; Mishler & Rose, 2007; Soss, 1999) contains a strict dividing line: ‘either crises provide valuable opportunities to learn lessons from past mistakes or their potential to drive such processes is limited’ (p. 117). Instead, we show that by fixing our analysis on the institutional mechanisms established in response to a crisis it is possible to see how different types of learning can occur in the post-crisis period: *institutional learning* that is driven by genuine imperatives of lesson learning and strengthening institutions, or *instrumental learning* that is driven by party-political considerations such as securing electoral gains or shifting blame to others.

**Table 9.** Two Types of Learning after Crisis

Type of learning	Objectives	Focus	Timing
Institutional learning (Iceland)	Rebuild trust/legitimacy Protect institutions in the future	Institutional failure	Early after crisis
Instrumental learning (Ireland & Greece)	Create favourable political narrative Blame game Electoral gains	Policymaking failure	After critical election (new parties and demise of dominant parties)

*Source:* Quoted from (Kovras, et al., 2018: 179)

The logic of *institutional learning* posits that where pre-crisis levels of trust are high, as they were in Iceland, political elites are more responsive to public expectations and calls for accountability. The need to establish accountability and rebuild trust in institutions therefore becomes largely independent of party-political considerations or ideology. Political elites will establish a TC even if its final report risks putting blame on them for the management of the crisis as electoral and legitimacy costs of inaction or covering up responsibility would be higher. Under such conditions, we can expect to see TCs adopted soon after a crisis, on the basis of cross-political

support, and with the expressed aim of establishing accountability by learning from past failures, reforming institutions, and rebuilding the public's trust in the political system –the essence of institutional learning.

**Table 10.** Truth Commissions: Significant Observable Features.

Steps	Observable indicators
Decision to adopt	Political timing of adoption Political support
Mandate	Temporal scope Investigative powers Scope of investigations Issues included Level of independence from politicians Focus on patterns of institutional flaws
Final report	Publication of report Scope of recommendations Cross-party support for recommendations Follow-up activities to act on recommendations

*Source:* Quoted from (Kovras, et al., 2018: 181)

While endogenous political dynamics, i.e. levels of political trust, predispose which pathway of learning the TC embarks on, this theorizing emphasises that it is the institutional mechanism *itself* –the TC –that shapes the learning that emerges. Put another way: intention sets the stage, whereas the proof is in the performance. To make an empirical assessment of which type of learning emerges, the theoretical framework provides three sets of observable indicators (Table 10) that are based on the existing literature on TCs and correspond to the phases that TCs progress through: *The Decision to Adopt*; the TC's *Mandate*; and the *Final Report*. For example, does the cross-party support hold and sustain the TCs work throughout, highlighting a priority of reinstating the legitimacy of the political system, or does the TC become an arena for party-political contestation and an instrument of electoral politics by other means? Does the TC enjoy the political and operational independence that is necessary to ensure that lessons are learned or is it not adequately insulated from party-politics? Is there an agenda of follow-up activities that honours the need of rebuilding trust in

institutions, or not? As elaborated in the research design (below), these observable indicators structure the article's impact assessment approach.

It is worth noting that instrumental learning should not be seen as defective or without value. It is just not as effective. When the tactical moves of elites are driven by a need to legitimise favourable discourses and use past policy failures of political competitors to score points, the outcomes are inherently different. An effective commission, one that has a significant positive impact, is here considered to be one where political learning is driven by the objectives of *institutional learning*.

### 3.3 APPROACHES TO ASSESSING TCs IMPACT

The literature on TCs is rich with approaches to the study of their impact. Initially, interest focused on whether a TC could be considered a 'success' or not. That is, as TCs operate under different contextual conditions and consequently have different approaches to the kind of 'truth' they seek, their success should be judged by the degree to which they fulfil their mandates and the type of report they issue, which marks the end of a TCs work (Chapman & Ball, 2001). The value of this sort of qualitative 'success' approach is that it allows for a nuanced understanding of the inner workings of TCs and possible causal mechanisms. When studying an emerging phenomenon, such qualitative richness is indispensable and a necessary precursor for a more bird's-eye view or large sample studies. However, the causal claims arriving from a success approach remain largely endogenous in nature. This limitation, as Brahm points out (2007: 17-21), curtails assessments of the many assumptions the literature draws about the positive impact of TCs on society and institutions, like strengthening democracy and the rule of law or facilitating healing in a divided society. While success is endogenous, impact is universal. Thus, later impact approaches have focused on the extent to which TCs have brought about changes in societies by distinguishing the broader political, institutional, and attitudinal impacts of TCs.

These later approaches include a variety of methods including large-N qualitative approaches (Olsen, et al., 2010; Taylor & Dukalskis, 2012), mixed method approaches (Van der Merwe, et al., 2009; Dancy, et al., 2010; Wiebelhaus-Brahm, 2010) and structured qualitative comparative approaches (Skaar, et al., 2015). These approaches do not lend themselves to use in our case because they are designed to capture different actors (those in emerging, not established democracies) and different contexts (legacies of repressive rule, not economic crisis). For example, the agency and impact of actors like the military, security forces, and non-state actors, which are integrated into these approaches, are not relevant when analysing how established democracies deal with the past after critical junctures like an economic crisis. Likewise, the contextual indicators of the anticipated impact of TCs like security sector reform, creation of human rights infrastructure, lower levels of repression and strengthening of political freedoms, are not relevant in our case. Moreover, while the impact-assessment approaches focus on what is measured, there is little agreement on precisely what impact to measure –e.g. reconciliation, justice, democracy or human rights protection –and how to operationalise such methodologically complicated concepts. As a consequence the literature on impact assessment approaches is characterised by a ‘coexistence of competing, if not outright contradictory, theories about TCs impact’ (Bakiner, 2014: 10).

In light of these shortcomings, there has been a shift in research strategies away from attempts to establish correlations between TCs and preconceived outcomes of interest and towards foregrounding the intricacies and agency of the TC process and how the process itself shapes TCs eventual impact (Kochanski, 2020; Gready & Robins, 2019). As Bakiner (2014: 15) states ‘what is needed is a theoretically informed process-tracing approach to generate and assess theories of impact’. Thus there is resonance between these critiques and how our theoretical framework prioritises unpacking how TCs themselves shape the type of political learning that emerges. Both emphasise shifting the analysis to what they see as left unstated or ill-defined, i.e. the point is not whether political learning happens or not, it is that the TC process itself shapes what type of learning emerges. Likewise, what matters is not that TCs result (or not) in an



intended outcome that can somehow be measured to establish impact, rather what matters is the interface between how the process is conducted and the impact it exerts.

### 3.4 RESEARCH DESIGN: THE IMPACT OF INSTITUTIONAL LEARNING

Thus, to understand how a TC can effectively drive learning and reform in an established democratic state and what impact an effective commission can have, this study adopts a two-phased research design that deploys theoretically informed process-tracing to unpack the Icelandic TC process, and then traces the longer-term impact of the process.

In the first phase of the assessment I repurpose the observable indicators provided by the theoretical framework of institutional and instrumental learning (Table 10). The indicators are used to guide the tracing of how the objectives of institutional learning are manifested in the three stages of the TC process: from the initial negotiations and consultations that led to the decision to adopt; to the design and execution of the TCs mandate; and to the time when the TC handed in its final report and the follow up activities instigated to implement its recommendations drew to a close. This part of the assessment is front-loaded, much like the ‘success approach’, as the analytical focus is on the inner workings of TCs and its operational environment. It can therefore yield similar benefits: a qualitative richness that is useful for generating hypotheses and exploring case-specific details of an emerging phenomenon like ours. The assessment however moves beyond a main limitation of the success approach, which is its narrow criteria of success (the fulfilment of TCs mandate and public issuance of a report documenting its findings), as ending an assessment at that moment in time ‘tells us little about the deeper social, political or institutional changes such processes seek to achieve’ (Thoms, et al., 2010: 8). Rather, before the first phase of the assessment is concluded the indicators are *revamped* in a way that makes the impact analogous to the learning process—effectively blending learning and impact. What is ultimately expected to emerge from a TCs work is how societies learn, and the impact

is here viewed as the extent of what they have learned. I therefore conclude the first phase by summarising how the learning objectives that are manifested in individual indicators cascade into what is the impact of institutional learning.

In the second phase, I look for supporting empirical evidence by tracing the impact of institutional learning in three categories: *impact on the financial system*; *impact on the political system*; and *impact on the space available for populist politics*. In the first two categories the TC's impact is traced on the institutions that were seen as source of the crisis and thus central to the TCs mandate: the financial system that collapsed and the political institutions that failed to prevent that collapse and subsequently became responsible for the management of the crisis. A study of these two categories allows one to trace the direct causal impact of the TC's work by assessing the extent to which the recommendations of the TCs final report materialised in changes to institutions, legislation, and practices.

As regards the third category, I assess the TC's impact on populist politics in Iceland. The emergence and vitality of populist politics depends on a large number of factors acting over a long period of time. Thus the impact cannot be as direct or clear cut as in the preceding two categories. That said, effective TCs provide public with reliable narratives of the past and thereby 'narrow the number of permissible lies' that can be circulated unchallenged in public discourse (Ignatieff, 1998). By doing this, TCs allow new and better founded discourses to emerge and 'democratize debates about the past –the essence of truth recovery' (Kovras, et al., 2018: 164). Thus TCs have the potential to clear and hold space that after a crisis that would otherwise be ripe for revisionist accounts, post-truth communications, conspiracy theories, and simplified discourses of 'political elites' vs. 'the people', which populists rely on to 'refashion the system in their own image, rather than refresh and reform it' (*ibid*, p. 188).

The process-tracing employed in this case study is based on semi-structured interviews with politicians, policy-makers, and staff of the Icelandic TC, who participated in the adoption and implementation of the TC, and on the archived

proceedings of the TC (George and Bennet, 2005). The tracing draws extensively on official publications of the TC, most prominently its terms of reference, its final report and public statements by the TCs commissioners, in addition to parliamentary records, including explanatory notes to parliamentary bills and speeches made by current and former political leaders. These are the most reliable sources to understand both the rationales for the adoption, design and implementation of the TC as well as for follow-up activities. This data is triangulated with references to mainstream national newspapers, official post-mortems commissioned by the executive and the legislature, and unofficial post factum accounts by key actors. The objective is to trace the learning process and its interface with impact, therefore the focus on the TCs proceedings, parliamentary proceedings, executive branch reports and legislative action and outcomes. This allows us to observe whether, and to what extent, political elites and those responsible for the TCs implementation were guided by institutional learning and how it materialised in reforms of the financial system and political institutions, or constrained the space available for populist politics.

Since the aim is to ascertain what constitutes an effective TC in an established democratic state and what impact such a commission can have, the focus is narrowed to a crucial case study (Eckstein, 1992) of the Icelandic SIC. After all, if Iceland's SIC—the most successful of the TCs established after the Great Recession—had little or no impact it is unlikely that TCs will have a discernable effect in less proactive countries. The value of crucial case studies like this one is that it can help us understand contexts and build theories. They, do not, however, support generalisable conclusions or assertions with predictive power. Also, the Icelandic case is open to the criticism of being an extreme case of one. However, this study seeks to move beyond the endogeneity of the success approach by adopting a theoretically informed process-tracing approach to assess impact. In so doing, it contributes to the still sparse set of single-case studies in the transitional justice literature that is devoted to systematic study of TCs impact. Also, since the deployment of TCs in established democracies is a new phenomenon, a crucial case study should increase understandings of how the TC process works in unfamiliar conditions, and can inform

refinements of theory and impact approaches with the emergence of new cases and testing against them.

### 3.5 MECHANISM IN MOTION

In October 2008, Iceland's three major banks collapsed within a week, taking 97% of the country's banking system with them. The fallen banks' assets are estimated at US\$ 180 billion, making the combined bankruptcies of Iceland's banks the third-largest corporate bankruptcy on record, behind Lehman Brothers and Washington Mutual (Benediktsdottir, et al., 2017). Iceland's banking system had been privatised five years earlier in a process which saw ownership of the banks handed to local investors with no international banking experience, and which was perceived as tainted by political favouritism. The 'Viking' bankers made aggressive use of their easy access to foreign credit and the free flow of capital within the European Economic Area (EEA) to swell the total assets of the banking system from less than two times GDP to ten times GDP (Benediktsdottir, et al., 2011). This made Iceland's banking sector the largest relative to GDP of any country (Switzerland was in second place).

The crash was swift and its force was overwhelming. Over 75% of the stock market was wiped out in the first two weeks (*ibid*: 185). The Icelandic krona depreciated by more than 70% in offshore markets (IMF, 2008: 5). External payment systems were disrupted; inflation shot up to 18%, and interest rates were raised to 18.25% (IMF, 2009: 4). The real economy was severely disrupted with the country's major companies facing bankruptcies. A crash in real estate prices caused 38% of households to go into technical bankruptcy (IMF, 2012: 104). The authorities, perceived as reneging on their international obligations, became isolated abroad and met with outright hostility in some quarters, as witnessed by the UK's use of terrorist legislation to freeze Icelandic assets, a move that placed a fellow NATO member in the company of notorious terrorist organisations. Iceland's meltdown, the first country-wide collapse after the fall of Lehman Brothers, became an international news story, the tale of how one of the most well to do and best-educated nations in the

world, a nation that topped the United Nation's Human Development Index, had 'organised [itself] to commit one of the single greatest acts of madness in financial history' (Lewis, 2009: 203).

### *3.5.1 Decision to adopt*

When the nation was still in shock, and before protest erupted, political elites moved quickly and pre-emptively, announcing that the causes of the crash would be investigated. Three days after the crash, the conservative party Prime Minister announced that an investigative mechanism would be established to 'be clear what happened and why' (Morgunblaðið, 2008: 10) and within two months Parliament had established the SIC by passing special legislation (Act no. 142/2008) that had been introduced by the Speaker of Parliament and co-sponsored by the leaders of all political parties—a procedure for tabling bills that is exceptional and usually reserved for constitutional amendments. This quick adoption was facilitated by high pre-crisis levels of political trust and showed that the need to establish accountability was largely independent of party-political considerations (Kovras, et al., 2018).

As Iceland had no previous experience of TCS, and limited experience of CoI's, the SIC was designed from scratch. Party leaders agreed that the entire process would be driven forward on the basis of cross-party consensus. In the words of the Speaker of Parliament at the time: 'we needed to respond sensibly, there was no point going through this in disagreement' (interview, Sturla Böðvarsson, Reykjavik, 1 December 2015). In these early days, there was a shared perception that all hands were needed on deck and that an unprecedented crisis required unprecedented measures. Or as the leader of the opposition's hard-Left party framed it 'politics managed to come together... [the Prime Minister] showed considerable maturity and realised this needed to be done. The events were of such magnitude that there would never be any agreement or reconciliation unless they were thoroughly investigated' (interview, Steingrímur J Sigfússon, 2. December 2015). Pragmatism also played a role. Fires were burning all over the financial and social landscape and there was a need to disconnect questions of accountability from the daily political strife, or 'create some

kind of path for this [i.e. ...], put it in a box so we could continue to focus on surviving' as the committee chair responsible for the passage of the SIC bill described the exigency of the emergency (interview, Birgir Ármannsson, Reykjavik, 4 February 2016).

The *political timing of adoption* contributed to the SIC's effectiveness. Hard evidence is easier to find and witnesses' memories are more reliable when events are still fresh at hand. Moreover, the passage of time can make witnesses take up more guarded positions and/or conceal information, particularly if investigations by prosecutorial authorities run parallel with, or precede, truth recovery efforts. On the other hand, if truth recovery is done first, as in Iceland, TCs can lift the veil on what is disputed or denied and thereby increase public pressure and political momentum for allocating resources to prosecutorial authorities. Finally, the political momentum and popular support for TCs is highest immediately after the crisis, and the window of opportunity to transform this momentum into reforms can be narrow (Hayner, 1994: 215).

A distinguishing feature of the TC process in Iceland was cross-party *political support*: a consensus that was forged in the early days of the crisis and which supported the process to its end. This consensus insulated the SIC from party-politics, bolstered its independence and underscored the fact that restoring the legitimacy of the political system was a priority for the political elites. As a senior political advisor to the government put it, the SIC process: 'It was just the right thing to do; we owed the nation an explanation of what went wrong and what needed to be fixed' (interview, Krístrún Heimisdóttir, Reykjavik, 26 May 2015).

In the months after the SIC had been set up, polarising pressures built up and a popular protest (the 'Pots and Pans Revolution') led to the collapse of the government and early elections. The new government and the new parliament set up additional mechanisms for accountability and reform: the trial of the former Prime Minister, cash reparations for households whose financial well-being had been damaged, and

constitutional reform. Unlike the SIC these mechanisms were politicised and polarising. Unsurprisingly, they delivered sub-optimal results (see Chapter 2).

As in the case of Ireland and Greece, where TCs were established after critical elections, the lesson appears to be that there is only a narrow window of opportunity for ensuring that institutional learning sets the stage for a TC's work and impact. Economic crises dent political trust, the unifying effect of a crisis quickly wears out, shock turns to anger, and elections tempt political elites to adopt mechanisms that are instrumental rather than institutional in their logic. Remarkably, the SIC process was not undermined by the divisiveness and acrimony. As a leading parliamentarian put it: 'thankfully these decisions had been taken so they [the SIC] could continue despite the fact that our politics became a mess' (interview, Birgir Ármannsson, Reykjavik, 4 February 2016).

### 3.5.2 *Mandate*

A TC's mandate reflects the priorities and concerns of the actors who set up the commission. The mandate sets the timeline for the commission's work, defines the subject and the scope of its investigation, and gives it its powers and its independence from politicians. Thus, the mandate is central to defining what the TC will document and what its impact will be. The objectives of institutional learning, which guided the Icelandic political elite's decision to adopt the SIC, meant that the SIC was equipped with a broad mandate, namely to:

*[S]eek the truth behind the events leading to, and the causes of, the downfall of the Icelandic banks in October 2008, and related events, [to] assess whether mistakes or negligence occurred in the course of the implementation of the laws and other rules regulating and providing for control of the Icelandic financial sector [and to determine] what persons may be responsible (Althingi, 2008)*

To this end the SIC was given several tasks: reviewing the legislative framework for the financial system; assessing the quality of financial supervision; recommending

improvements in legislation, regulations, working procedures and structuring of the public administration; referring cases of suspected criminal wrongdoing to prosecutorial authorities; and handing in a final report with its recommendations. In a further effort to restore public trust, the SIC was also tasked with addressing the personal responsibility of cabinet ministers and senior officials. Moreover, and unusually, a sub-commission the Working Group on Ethics (WGE) was established to look into whether the crisis could be explained to some extent by poor standards of morality or weak work practices in the financial sector and other areas of society. The SIC's mandate explicitly left it to the commissioners to interpret key parts of its own written text: most notably to set priorities and select methods that to guide the investigation and drive it forward. The commissioners also had a free hand in defining the *temporal scope* of the investigation. The mandate instructed them to go as far back as needed to uncover the historical patterns that allowed the crisis to occur, and as close in time as needed to hold the authorities to account for their handling of the crisis.

The comprehensive *scope of the investigations* and the broad range *issues included* made it easier for the SIC to address the causes and origins of the crisis, reveal the dynamics and mechanisms that drove it, and assess its consequences. A broad mandate of this kind enables a TC to assess the overall institutional framework of the state and identify patterns of institutional flaws, thus exerting a broad-based impact on institutional reform. Coupled with a high level of independence, a broad mandate also frustrates the efforts of actors interested in over-simplified narratives that exclude inconvenient truths. Additionally, by investigating the moral and ethical sources of the crisis the SIC was able to contribute to a deeper public understanding of how Iceland's elites and institutions lost their bearings. This somewhat unusual feature arguably gave the SIC a stronger impact on a public that was more attentive to moral and ethical based sources of the crisis than to technical ones.

The other principal source of the SIC's legitimacy was its *level of independence*. Independence is needed for a TC to be credible in the eyes of the public and effective



in its work. In practical terms independence (political and operational) is defined by a TCs ability to apply its mandate ‘free of actual or apparent pressure, unwarranted influence, or dependence on any other institution or person’ (González & Varney, 2013: 16). Numerous steps were taken to secure the SIC’s *political independence*. There was a consensus that the SIC should be headed by ‘irreproachable professionals who were outside the grind of politics’ (interview, Sturla Böðvarsson, former Speaker of Parliament, Reykjavik, 1 December 2015) and the appointed commissioners were selected to reflect key investigative institutions: A Supreme Court judge; the Parliamentary Ombudsman; and an Icelandic-born Yale economist with banking expertise. To further demonstrate their independence the commissioners were obliged to publicly disclose their financial records and any links they and their family members had to the institutions under investigation. The mandate also assured the SIC autonomy in its work. State institutions (including Parliament) were forbidden to interfere with it and the SIC law compelled all public and private institutions, entities, and individuals to assist the SIC in all ways requested. Importantly, the qualifications of the three commissioners, and those of the three individuals who headed the WGE, ensured that a range of epistemological and methodological perspectives was represented: the judge and the Ombudsman showed up with legal binders; the economist pressed for quantitative databases and network analysis; the philosophers set out to do qualitative research in applied ethics. Though tensions arose between the legal and the scientific approaches, as documented in other TCs (Chapman & Ball, 2001), these subsided and the parallel pursuit of several approaches led to a broader collection of data, and a production of a broader type of truth than would have been possible otherwise.

The SIC also enjoyed *operational independence*. It was given ample funding despite the Treasury facing historic deficits. Requested budget appropriations were approved without comment and there was no hint of financial support being used as leverage to influence the SIC’s work (anonymous interview, senior SIC researcher, Reykjavik, 30 November 2015). The generous funding was important: a well-funded commission is able to hire enough staff and conduct thorough investigations, which leads to a more

comprehensive analysis (Brahm, 2007: 30). At the same time, it helped that the SIC was seen as frugal and austere. Salaries were modest and total costs were kept below three million EUR. In addition to control over all financial and budgetary decisions, the commissioners enjoyed autonomy over staffing decisions. To that end the SIC's mandate granted exemptions from legislations governing the civil administration. Finally, the commissioners and the SICs staff were provided indemnification so as to allow their work to proceed free from the fear of subsequent retaliation.

To enable it to conduct an effective and independent investigation the SIC was given exceptional *investigative powers*, including but not limited to subpoenaing witnesses, seizing evidence and searching premises. Obstructing the investigation was made punishable by up to two years' imprisonment. Public and banking secrecy laws were lifted, a step that empowered the SIC to require data and at the same time demonstrated that the public interest was being given priority. This gave the SIC access to data from the failed banks (including financial transactions, electronic communications, recorded phone calls, and legal documents). Equally important it gave them access to data from public institutions such as the tax authorities (notably all tax returns submitted for the last ten years), the central bank, the financial supervisory authority, and government ministries. Or as one staff member of the SIC put it 'everything you want, you can use' (anonymous interview, senior SIC researcher, Reykjavik, 25 April 2017). This allowed the SIC to reconstruct events in the lead up to the crisis, and understand the more intimate drivers of specific decisions. The SIC also interviewed 147 witnesses (SIC, 2010) behind closed doors to 'avoid rehearsed, standardised responses that are designed for media headlines and for shifting responsibility' (anonymous interview, senior SIC researcher, Reykjavik, 30 November 2015). As an incentive for disclosure and in order to make the process less adversarial, witnesses were given legal guarantees that statements made to the commission could not be used before any court. In some cases, at the end of the interview, the microphones were turned off, and witnesses were encouraged to talk 'off the record' (*ibid*).

The extent and nature of the investigative powers given to the SIC, and the manner in which it used them is clear evidence that identifying failures and learning from them –the essence of institutional learning –was a guiding principle.

### *3.5.3 Final Report*

The work of a TC culminates in the publication of its final report. As temporary bodies, with no direct power of enforcement, TCs rely on moral suasion, public pressure and political will to see their recommendations realized (Brahm, 2007: 28). In this final stage of the TC process we find TCs at their most powerful and on the brink of being powerless. Powerful, because it is the commission that lifts the veil and makes private truths public. On the brink of being powerless, because at this point agency will shift back to political elites who may, or may not, have the appetite to follow-up on the TCs work. Under these circumstance the impact of a final report depends on number of factors, including the environment in which it is released, how widely it is disseminated, the depth and breadth of the public's reception, media-coverage, and the follow-up activities of political elites.

In April 2010, a year and a half after its establishment, the Icelandic SIC concluded its work. Its final report, extending into nine volumes and 2.300 pages, demonstrated that the SIC had accomplished what it was meant to do: establish the facts and ascertain the causes of the crisis; assess the authorities' handling of the crisis; assess the institutional and legal framework that was in place; propose reforms; and assess the personal accountability of cabinet ministers and senior civil servants. In terms of fulfilling its mandate, the release of the final report demonstrated that the SIC had been a 'success'. More notably, the content of the final report showed that the objectives of institutional learning were kept at the forefront. The prior effective conduct of the process allowed for a relatively early release that warded off the risk of the report's content losing momentum, focus, and political and public attention. That is, the report was published when the recovery was still underway, public interest was still high and the atmosphere was still ripe for reforms. Additionally, the mode of *publication* of the final report showed a desire for transparency and supported

the rebuilding public trust. After a press conference where the commissioners presented their findings, the report was released directly to the public in print and online. The report, printed in colour on good paper, was clearly organised and comprehensive; the layout was as user-friendly with graphs, pictures, and direct quotes from witnesses highlighted on the report's wide margins. Moreover, the report was written in accessible language that further demonstrated that the primary audience was the public –an informed public that, through extensive public debate and media coverage, had gained an enhanced understanding of financial transactions. While the SIC had conducted its proceedings behind closed doors, it compensated for this secrecy and bolstered its credibility with the public –often to the unpleasant surprise of the witnesses –when it included in its final report extended verbatim excerpts of the testimonies, including some that were disarmingly comical or distressingly blunt. The inclusion of these excerpts gave the report an engaging narrative quality, it was a saga:

*I had just started speaking, and then he started to rage, he said I was undermining his proposals and said: 'Out there sits the Prime Minister and shakes like a leaf in the wind and can't take a decision. He listens to you and you are undermining this. If this is not done, then I will personally see to that you will not be able to live in Iceland for the rest of your life.'*

Testimony of Tryggvi Þór Herbertsson, advisor to the Prime Minister, recounting a conversation with the Governor of the Central Bank of Iceland, SIC (2010, vol. 7, p. 31).

*I think there is fundamental misunderstanding of what financial supervision is all about here in Iceland. Not only at the Financial Supervision Authority but also at the Central Bank. They thought that the role of these institutions was to check whether the letter of the law was met by those under supervision. So you are watching the entire financial system falling off a cliff, and as long as they follow the law, you're fine.*

Testimony of Þórarinn Pétursson, senior economist at the Central Bank of Iceland, SIC (2010, vol. 5, p. 156).

Because the fact that so many individuals were quoted, it reduced the stigma, in a small society, of having one's name mentioned in the report. The report became an immediate national bestseller selling off pallets in book stores and supermarkets. It

was sold at cost, for 6.000 Icelandic kronas (35 EUR), or about the same as a bag of groceries. The media was saturated with the report's revelations and their implications, and the Reykjavik City Theatre live-streamed a six-day marathon read-through, which it released as an audio book. The report made a strong impact on the national consciousness and the SIC succeeded in being perceived as a legitimate arbiter of truth as witnessed by a Gallup poll conducted two weeks after the publication. This poll showed that 96% of respondents believed that it was important that the SIC had been established; 84% said they trusted the SIC, compared to 2% who said they did not. 87% of respondents were pleased with the report, 12% were neutral, and only 1% were displeased (Gallup, 2010). Finally, 53% believed the report would lead to improvements in governance and ethics, while 22% believed such reforms were unlikely (*ibid*).

The *scope of the recommendations* made by the SIC was, as the mandate dictated, broad and addressed the need to strengthen institutions in areas where they had failed. In its conclusion, which runs to 160 pages, the SIC reported its diagnosis of the causes of the crisis, an assessment of the institutional response, and a description of the issues the authorities needed to address to prevent repetition. It provided wide-ranging recommendations on improving laws governing financial institutions and their surveillance; increasing the professionalisation of the civil service; strengthening co-ordination and formality in the exercise of executive powers; and improving the authorities' emergency preparedness and crisis management. In addition to recommending institutional reforms the SIC also addressed the personal accountability of public officials. It concluded that three cabinet ministers had shown negligence in the management of the crisis and that the three governors of the Central Bank and the director of the financial supervisory authority had shown negligence in the discharge of their duties. While the SIC was not tasked with identifying possible criminal conduct within the banks, its final report reprinted a memorandum to the State Prosecutor detailing findings that were thought relevant for criminal investigations.

The main shortcoming of the SIC's report is that its recommendations were interwoven with the lengthy diagnostic text of the conclusion chapter and not presented, as better practice would dictate (see e.g. Mayer-Rieckh & Varney, 2019), as a stand-alone list of action points, grouped by topic, prioritised, and addressed to specific office holders. This omission was caused by time pressure facing the SIC, with staff admitting they 'simply ran out of time' and would have wanted to 'tighten them [recommendations] up' (anonymous interview, senior member of the SIC, Reykjavik, 5 February 2016). A result of exhaustion and time pressures. The omission was to some extent offset by the fact that the report of the Working Group on Ethics (WGE), distilled the SIC's findings and added specificity. The WGE's recommendations, presented as 'lessons', included a strengthening of Parliamentary oversight; the establishment of a code of ethics for MPs and cabinet ministers; a reform of political party funding; and tightening of laws governing ministerial responsibility. The WGE's gaze also extended further: its report included recommendations to reform to the national curriculum to strengthen critical thinking and democratic education; reforms of tertiary institutions to strengthen academic independence; and reform of media laws.

The SIC's terms of reference gave the authorities a free-hand on how to *implement the recommendations* as there were no provisions for follow-up mechanisms to monitor or co-ordinate implementation. In principle this might have undermined the SIC's impact. But in practice the objectives of institutional learning that had characterised the process to date remained in place and there was a follow-up that met the need to rebuild institutions and trust in them. The government established a special working group of academics, in law and public administration, to set out how the cabinet and other government institutions should carry the SIC's recommendations forward. In parallel with this executive branch initiative, Parliament established a special cross-party parliamentary committee to 'draw lessons from the SIC report and point to ways for reform'. The all-party committee published a 265-page report distilling the findings and noting the lessons to be learned. Based on this report, Parliament unanimously passed a *mea culpa* resolution (no. 29/138 of 28. September 2010) that

set out a legislative reform agenda. ‘It is important that the SIC report continues to be a guiding light’, it said. Furthermore, ‘it is important that everyone looks critically at their own actions and uses the opportunity that the report offers to improve society’. As has been seen in other transitional societies, once truth recovery efforts gather pace the appetite for such efforts only grows stronger (Wouters, 2014). This was the case in Iceland and the SIC’s findings spurred parliamentary Commissions of Inquiry (CoI’s) into the collapse of the savings bank system; the public mortgage provider; the pension funds; and the privatisation of one of the state-owned banks. Lastly, ten years after the publication of the Final Report, the government –in response to a request from the political opposition –compiled and published an extensive cross-ministerial assessment that concluded that more than 90 percent of the 249 recommendations identified in the SIC’s Final Report had been implemented (Prime Minister’s Office, 2020).

The *cross-party support for the recommendations* shows that, at a juncture where the SIC process was weak and the implementation of reforms was not assured, political elites coalesced around the need to learn from past failures and strengthen institutions. The support was independent of party-political considerations and ideology but it would be a mistake to attribute it to sheer political altruism: the overall strong design of the process, the quality of its implementation to date, and the public support it had attracted would have made inaction, obfuscation, or denial, electorally costly.

The one instance of a breakdown in the cross-party consensus came when Parliament dealt with the SIC’s finding that three ministers had shown negligence. After acrimonious debates, a narrow majority voted to bring one of the ministers, the former Prime Minister, before a High Court of Impeachment. The trial and the process leading up to it was characterised by the objectives of instrumental learning where the subject matter was policymaking failure (not institutional failure), the accountability was personal (not institutional), and the process resulted in blame games (not reforms). The trial produced little new information but it polarised political debates. It strained personal political relationships as well as the country’s

culture of consensus-building (Hjalmarsson & Kovras, 2017). The stress it created was such that it could have derailed the political consensus that had supported the SIC process from its inception.

Fortunately, however, the consensus, and the strong virtuous cycle that it had fostered, prevailed. The SIC's recommendations were implemented during the ensuing ten years, through three national elections and under the leadership of four different constellations of coalition governments. Further evidence of the strength of the virtuous cycle was the government's decision, after a generational change in the political elite, to respond to a request by the leaders of the political opposition for an appraisal of the implementation of the SIC's recommendations by conducting one of the more resource demanding assessments undertaken by the executive branch (Prime Minister's Office, 2020).

#### *3.5.4 Institutional learning as impact*

Institutional learning –learning from the failures of institutions with the objectives of establishing accountability, restoring trust, and preventing a recurrence by means of reforms –was manifested throughout SIC process and shaped its impact.

The stage was set by an early cross-party consensus, which underscored the desire by political elites to reinstate the legitimacy of the political system. The early start enabled the truth-seeking exercises to press on before the quality of data deteriorated and positions hardened under the polarising pressures of the crisis. By acting fast the political momentum and popular support for the SIC was harnessed, leading to stronger impact.

The SIC's broad mandate, and the manner in which it was implemented, demonstrate the strength of the institutional learning that took place. The mandate prioritised the need to learn from institutional failures to prevent repetition, which in turn equipped the SIC to exert a broad-based impact on institutional reform. The breadth of the impact was further enhanced by the plurality of investigative approaches taken by the



commissioners and by the novel WGE, which resulted in a broad collection of data and an equally broad production of truth. The SIC's high level of independence, both political and operational, was central to the commission's ability to be perceived as a legitimate arbitrator of truths and for its findings and attribution of accountability – institutional and personal – to be accepted by the public and by rivalling political elites. Without it the impact of the SICs findings and recommendations would have been compromised. Crucially, the SIC's strong investigative powers were critical for the commission's effective execution of its mandate, the robustness of the process, and the impact exerted. The lifting of public and banking secrecy laws, gave priority to public interest and provided access to the forensic information needed to establish objective truths; strong authorisations ensured compliance from individuals and institutions, and reflected political elites' readiness to be held to an account; and the conduct of witness proceedings and other data collection prioritised the identification of failures in order to learn from them.

When the final report was released it was evident that the SIC had been a success in terms of fulfilling its mandate. More importantly, the report and its afterlife were the culmination of the blending of learning and impact that had hitherto marked the process. The extent of the learning that had emerged from the SIC's work was evidenced by comprehensiveness of the SIC's findings and the broad scope of its recommendations. The report empowered the citizenry by providing an authoritative yet understandable diagnosis of an exceptionally complex crisis. By establishing the facts it limited what political elites could dispute or deny and set a baseline from which the work of restoring legitimacy could proceed. The remedies that were proposed converted failures into lessons, whose objectives were to ward off repetition and bring accountability. And finally, at a time of vulnerability, the building momentum of institutional learning, as presented above, proved resilient enough to ensure that the learning was absorbed and that it would later materialise in concrete reforms.

### 3.6 IMPACT

#### 3.6.1 *Impact on the financial system*

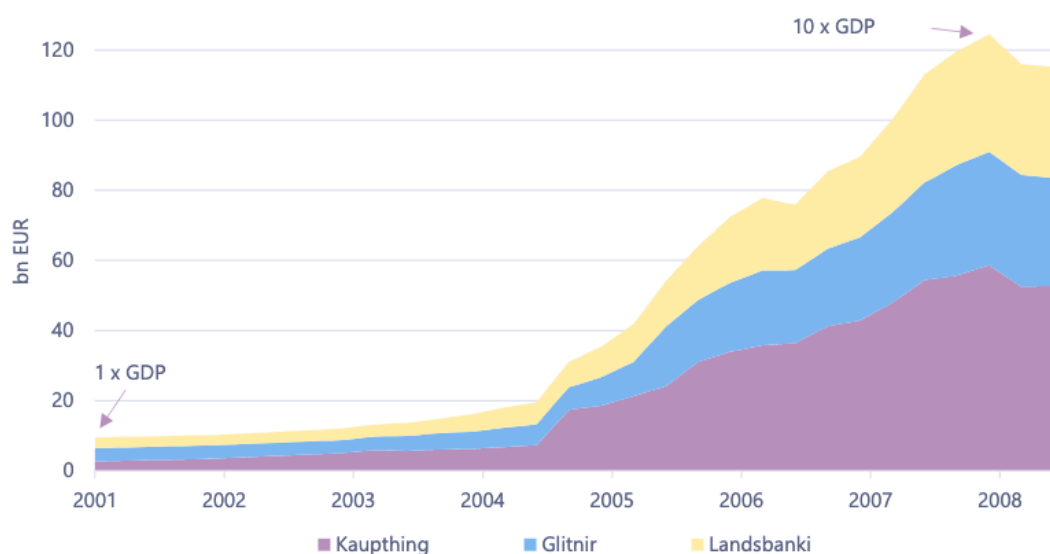
The SIC identified the rapid expansion of the banks, after their privatisation, as the root cause of the collapse of the financial system [Graph 1]. The expansion was facilitated by the banks' easy access to abundant liquidity in European capital markets, which allowed Icelandic banks to grow to a disproportionate size relative to the economy and the state's financial resources (SIC, 2010, vol. 7, pp. 177-82). The SIC dissected a litany of governance failures within the banks during this period of growth. These included the blurring of lines between the interest of the banks and that of their controlling shareholders, who captured more than 100% of the banks' Tier 1 equity by means of elaborate and opaque cross-ownership structures [Graph 2]. Cross-ownership allowed shareholders to circumvent legal constraints and increase their already high leverage to dangerous levels. As for banks' managements, incentive schemes within the banks fuelled excessive risk-taking by subverting compliance procedures for issuing loans and assessing risk exposures (*ibid*, pp. 222-27). The SIC found that when liquidity dried up on international capital markets, after the fall of Lehman brothers in 2008, systemic risk in Iceland was dangerously high owing to highly-leveraged bank owners' capture of their banks' loan books and cross-financing through ownership of each-others' shares (*ibid*, pp. 188-90). Little surprise that the system collapsed.

In a crushing assessment of the financial supervisory authorities, the SIC found that their resources and practices did not keep up with the expansion and internationalisation of the banks' operations (*ibid*, 267-73). Oversight was inadequate, necessary IT systems were not in place, staffing was insufficient, and there was regulatory capture. In short, the authorities' capacity to assess financial stability and respond to the build-up of systemic risks was wholly deficient.

In direct response to the SIC's findings, Parliament passed a new law (Act no. 155/2012), to reform the state's ownership and sale of shares in financial institutions. The new law addresses the central regulatory gaps that the SIC found in the 2002-3

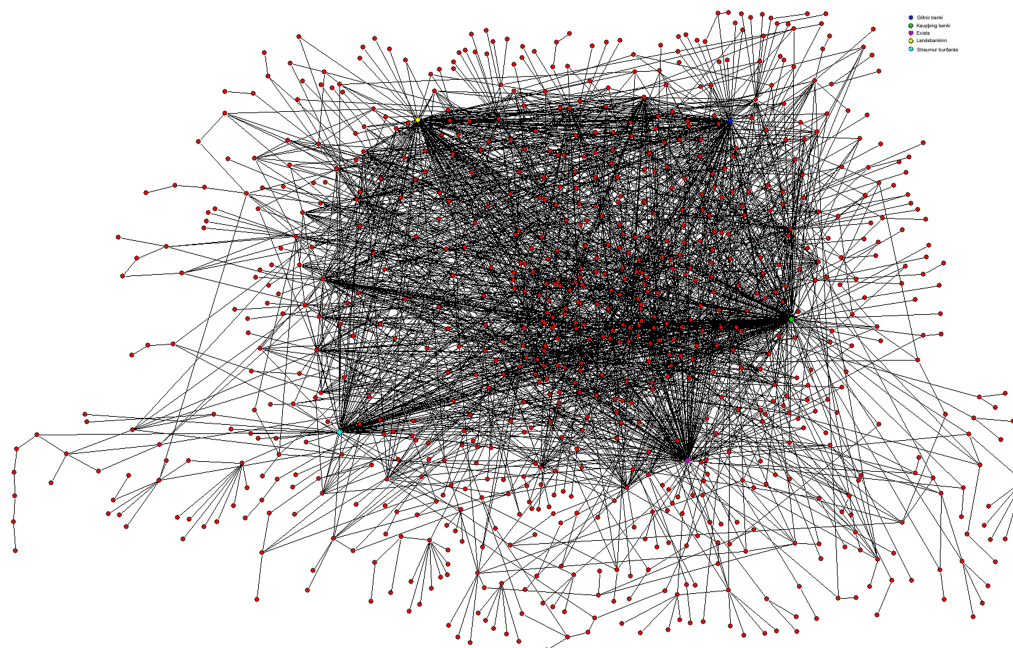
privatisation (which saw the banks sold to domestic investors without international banking experience amid allegations of political favouritism). It sets clear rules and conditions for sales of state owned shares in the banks; an arms-length principle for cabinet ministers' involvement the sale; and authorisations from Parliament before any sale of shares in financial institutions (SIC, 2010, vol. 1, pp. 300-6). The law remains relevant since twelve years after the 2008 crash the state maintains ownership of two of Iceland's three resurrected banks.

**Graph 1:** Growth of the assets of Iceland's three major banks (EUR billions)



Source: SIC (2010), quoted from (BIS, 2020: 5)

The modus operandi when adopting EU/EEA regulations and directives on financial markets has also changed as a result of the SIC's analysis and recommendations. Prior to the crisis, the Icelandic authorities did not make use of discretionary scope provided to set more stringent conditions on the operations of the banks. Instead, they set the bar as low as possible to improve the competitiveness of the Icelandic banks, who pressed their advantage when inflating their balance sheets (SIC, 2010, vol. 7, pp. 282-3). Now, this scope is used to take into account the authorities assessment of specific features of the Icelandic financial market (chiefly, its vulnerability due to small size) and the practices of the other Nordic countries (Prime Minister's Office, 2020: 203).

**Graph 2.** Cross-ownership in the Icelandic financial system pre- crisis.

Source: SIC, 2010, vol. 9., appendix 2, p. 23.

Banking regulation and supervision has undergone a sea change since the crash. During this period the core of legislation governing banks (Act no. 161/2002) was amended close to 40 times (BIS, 2020: 33). The transformation of banks' governance and supervision took place in the context of an IMF-supported economic program, extensive IMF technical assistance, and the authorities' adoption of the Basel III Standards and the EU/EEA regulatory directives that emerged in response to the Great Recession. These contemporaneous external influences, however, complicate the assessment of the SIC's influence on the reforms undertaken. In some instances the requirements set in Iceland are more stringent than elsewhere, which indicates the specific impact of the SIC, while in other instances significant overlaps exist between the SIC's recommendations and the outside influence, as witnessed by the government's fact that the key recommendations made by the SIC have been implemented (Prime Minister's Office, 2020).

To prevent the re-emergence of opaque cross-ownership structures there is now a statutory National Credit Register (Act no. 75/2010), which provides the data needed to assess connected lending and monitor compliance with regulations governing large

exposure and analyse systemic risk. Moreover, restrictions on connected lending have been tightened, the legal definition of connected entities is broader, and bank cross-financing has been curtailed by prohibiting loans secured by banks' shares (BIS, 2020: 38).

The reform of incentive schemes for banks' employees was a priority for the authorities after the release of the SIC report (FME, 2011b) and the schemes now in place in Iceland impose stricter conditions on incentives than are imposed under European rules (Cullen & Johnsen, 2015). Variable compensation is capped at 25% of fixed compensation (it is 100% in EU legislation) and banks' board members and staff working in control functions are not allowed to get any type of incentive pay. Moreover, preferential terms that bankers and large shareholders used to receive (such as lower interest rates and loans backed by guarantees secured by banks' own shares), are now prohibited (FME, 2011a).

Likewise, to ward against over-leveraging and to strengthen the financial system against future shocks the total capital adequacy requirement (including financial buffers) imposed on the Icelandic banks remain among Europe's highest, or between 18.8% to 20.5% (EBA, 2020: 7; BIS, 2020: 35).

In the years that have passed since the SIC's damning dissection of the supervisory authorities, these authorities have doubled the size of their staff and developed a suite of IT and analytical tools. They have been given expanded supervisory powers and the size of the maximum fines that supervisors can impose on the banks has increased to 16 times the pre-crisis level (BIS, 2020: 34). Finally, in response to its comprehensive failure to secure financial stability, the Central Bank of Iceland created a new Financial Stability Department in 2011, appointing one of the SIC's commissioners as its director (Central Bank of Iceland, 2011). To further strengthen oversight a new cross-governmental Financial Stability Council was established (Act no. 66/2014) and the government cited the SIC's work as part of the explanation for its creation (Parliamentary Document 765-426, 2014).

### 3.6.2 *Impact on the political system*

In assessing the roots of the crisis and the authorities' reactions to it the SIC found weakness in all quarters. The SIC concluded that the authorities had lacked the power and courage to place reasonable limits on the financial system (SIC, 2010, vol. 7, pp. 263-4). A series of centre-right governments had encouraged the growth of the financial system, which they saw as a new pillar to the Icelandic economy. When the financial system became too large relative to the economy, in 2006 or earlier according to the SIC, the authorities' scope for action narrowed:

*'When the size of a country's financial system is, for instance three times its GDP, the authorities are able to set rules for the financial system, and to ensure compliance with such rules. When the size of the financial system of the country is nine times its GDP the roles are reversed' (SIC, 2010, vol. 1, p. 46).*

Fearful of initiating actions that could potentially destabilise a teetering financial system, the authorities focused on keeping the system going and dealing with the banks' image crisis instead of solving their fundamental problems (SIC, 2010, vol. 7, p. 263). Political paralysis set in and was exacerbated by an unclear division of tasks and responsibilities among ministers, their ministries and key institutions (*ibid*, pp. 259-66). There was a lack of initiative and evasion of responsibility. The crisis-response was further undermined by a lack of co-ordination and formalisation in the exercise of executive powers. Emergency-preparedness frameworks were weak, decision-making was conducted through ad-hoc channels, lines of communications and record keeping were poor, civil servants were not sufficiently independent, and necessary assessments and analysis were not prepared (*ibid*, pp. 279-83). The SIC also found parliamentary oversight wanting. Parliament was insufficiently independent from the executive branch and key legislation was ill-prepared and lacked needed authorisations to ensure effective oversight and supervision of the financial system (Prime Minister's Office, 2020: 8-9). The WGE established that all political organisations in Iceland (with the exception of the hard-Left party) had received substantial donations from the banks (SIC, 2010, vol. 8, p. 165). It concluded that

academics and the media had joined hands with politicians and businessmen to defend the image of the banks and that the country's politicians had 'neglected their duties and failed in their responsibilities to the public' (*ibid*, p. 242).

The authorities response to the SIC's findings was comprehensive. Just over a year after the final report was published Parliament passed an overhaul of the Act on Government Offices (no. 115/2011). The government bill stated in its explanatory note that the overhaul was based on the SIC's learnings and the work of a special working group, reporting to the Prime Minister, that was established to respond to the SIC's findings (Parliamentary Document 1191-674, 2011). The new Act reshaped the exercise of executive powers in Iceland and addressed the need for a clear division of tasks, previously missing, among ministers, their ministries and other state institutions. The Act shifted the responsibility for establishing this division from Parliament to the Prime Minister to underline her responsibility for ensuring clarity and demonstrating that powers come with responsibilities (*ibid*). Moreover, and for sake of compliance, the Act for the first time listed ministers' duties with respect to governance and oversight over state institutions within their purview, including over state owned companies such as financial institutions.

Another objective of the reform was to strengthen coordination between ministries. Ministers are now compelled to cooperate when their mandates overlap, as happened in the crisis, and in an effort to curtail the paralysis that hampered the crisis-response the Prime Minister is required to ensure that such cooperation takes place (Prime Minister's Office, 2020: 195-6). Also, the Prime Minister is now required to bring up issues of national concern in the cabinet, a failure identified by the SIC and one that was found to facilitate a sofa cabinet conduct of state affairs that left cabinet members out of key national decisions (SIC, 2010, vol. 7, pp. 259-264). Furthermore, the Act establishes permanent ministerial committees on economic affairs and public finances, which meet regularly and function as emergency preparedness mechanisms. Additional committees can be appointed, according to need, and at the time of writing there is one that oversees the ongoing restructuring

of the financial system (Government of Iceland, 2020). These committees, particularly the one on economic affairs, have been instrumental in shaping the authorities responses to later crises, such as the Covid-19 pandemic.

The new Act on Government Offices (no. 115/2011) also addresses deficiencies identified by the SIC in the civil service's response to the crisis. It clarifies the legal obligation of civil servants to inform ministers with assessments and analysis, and requires ministers to seek advice from civil servants in order to ensure that minister's actions and decisions are within the law. To respond to the lack of formality during the crisis, the Act sets out requirements for keeping records of both formal and informal communications. At the same time the Information Act (no. 140/2012) was comprehensively upgraded to strengthen transparency and eliminate grey areas in record keeping at times of crisis. Moreover, a new Office of Legislative Affairs was established in the Prime Minister's office to provide quality control before cabinet bills are tabled in Parliament. To strengthen the independence and professionalisation of the civil service, which the SIC found to be undermined by political appointments, the new Act on Government Offices requires the appointment of evaluation committees in the recruitment of senior civil servants. Finally, ministers were given greater scope to hire special advisors to strengthen the political initiative and leadership that the SIC found lacking in the crisis.

The SIC's findings also led to wide-ranging reforms of Parliament's standing orders (Act no. 84/2011). The reforms strengthened the oversight role of Parliament, increased its independence from the executive branch, and gave additional leverage to the political opposition in its efforts to hold governments to account. Parliament's Standing Committees were also restructured in order to ensure their conformity with the division of tasks between ministers. Moreover, a new Supervisory Committee was established to strengthen Parliament's oversight: a quarter or more of its members can initiate a review of a minister's conduct or the decision-making of senior officials. Additionally, the political opposition's right to receive and request information from



the executive branch was strengthened. And lastly, new processes were created to improve Parliament's oversight and review of the adoption of EU/EEA directives.

In response to the WGE findings and recommendations, the amendments to the Act on Government Offices (no. 115/2011) established a code of conduct for cabinet ministers. Alleged violations of the code are to be referred to and reviewed by Parliament's Supervisory Committee and Parliament's Ombudsman. Similar codes of conduct were also created for parliamentarians (Resolution no. 23/145 2016) and senior civil servants (B-410/2012). In addition, Parliament adopted rules on the disclosure of the financial interests of parliamentarians, which established a public register of the financial interests and external affiliations of parliamentarians. The rules on financing political parties have also been tightened (Act no. 119/2010), increasing transparency, oversight, and enforcement. A second order impact on the political system has taken the form of follow-ups to WGE's recommendations. Most prominently, amendments to the media laws (Act no. 38/2011) were intended to buttress editorial independence and make ownership transparent; amendments to the Universities Act (no. 67/2012) aim to curtail the influence of business interests on research and academic freedom; and the adoption of a new National Curriculum (Act no. 91/2011) gives priority, for the first time, to the fostering of critical thinking and democratic education. Finally, as a result of the SIC experience, there is now a legislative framework for parliamentary investigation committees (Act no. 68/2011). Four investigations have already been launched on this basis. This indicates that the practice of official truth-seeking after critical events has entered the sub-conscious of Icelandic society as an expected and desirable practice.

### *3.6.3 Impact on the space available for populist politics*

Support for populist politics surged in Europe in the wake of the Great Recession, marking a third wave of populism (see e.g. Wodak, et al., 2013). As one of the hardest hit countries, Iceland nevertheless remained resilient to the appeal of populist politics. Since many factors contribute to the potency of populist politics this assessment of the SIC's impact on populist politics is speculative. That said, a review of political

developments suggests that the official narrative that the SIC created and the accountability that this entailed, cleared and held space that would otherwise be available for populist politics.

The objectives of institutional learning that guided the SIC, and split partisan and punitive motives away from the learning process, enabled rival political elites to accept the SIC as a legitimate arbiter of truth. Though political elites may criticise the SIC's findings in private, with one former political leader called the Final Report a 'shrine' that could not be challenged (interview, Árni Páll Arnason, 22 August 2017), they rallied behind its report as evidenced by their follow-up activities. Differences of emphasis remained –the political Left saw the privatisation of the banks and the lack of political will to regulate them effectively as root causes of the crisis, while the Right focused on the corrupt practices of the business elite operating on international financial markets –but these differences were contained within an official narrative that provided a factual and analytical basis which political elites agreed on and the public had ownership of. The SIC therefore occupied space that could otherwise be open to populist and revisionist accounts of the failures of Iceland's political and financial systems. As a result the country proved resilient to the type of blame game politics in which attributions of responsibility for the crisis and people's hardships are pushed away from its sources and on to expedient political targets, be they immigrants, nefarious and nebulous elites, or supranational institutions.

The SIC also provided a rallying post for discussions of accountability as witnessed by the manoeuvrings of the anti-system parties that entered Parliament. The Citizens' Movement, a political party that emerged from the popular protests in 2009, proved to be one of the firmest advocates for the SIC. Prior to the publication of the final report the party called for more robust follow-up mechanisms (Parliamentary Document 523-286, 2009). After the report was released, the party's leader stated in Parliament it was 'no whitewash' and expressed hope that 'the findings of the report result in the best legislation that can be composed to prevent another crisis, and we need to find the will, courage and honesty to address our society's ills'

(Jónsdóttir, 2010). The party also pushed, unsuccessfully, for a full English translation of the report (Parliamentary Document 1694-883, 2010) for purposes of external accountability, and repeatedly cited the SIC's findings in speeches and proposed amendments to bills that aimed to enhance the accountability of the political system. Following the 2013 national election the Citizen Movement was replaced in Parliament by another anti-system party, the aptly named Pirate Party which, like its predecessor, used the SIC's final report as an instrument to hold established elites to account. The most recent example of this is a push by the Pirates' leadership for a cross-ministerial assessment of the implementation of the SIC proposals (Prime Minister's Office, 2020). The final report thus functioned as a rallying post for accountability discourses of those critical of the system, tempering energies that might otherwise have found outlet in challenges to the legitimacy, stability or consolidation of the political system.

Though it proved resilient against its appeal, Iceland was not immune to populist politics. In early 2009 the Progressive Party, a traditional agrarian party, was taken over by a new populist leadership. Anti-immigrant and nationalist rhetoric was pushed, nurturing a narrative of victimhood, of a nation under siege (Bergmann, 2015). But by the time of the 2013 elections the SIC had closed off the space available for revisionist accounts of the crisis or electorally expedient rallying cries for accountability. The focus of the campaign was therefore not on causes of the crisis or its (mis)management, but rather on the post-crisis government's record of mitigating the economic impact of the crisis. In this environment, the Progressive Party harnessed popular discontent with the government's perceived failure to lift households out of bankruptcy. A simple solution was promised to fix a complex problem: a 20% across-the-board write-down of voters mortgages, financed by squeezing the foreign 'vulture funds' which the party said were profiting from the restructuring of the financial system. The party captured a quarter of the votes and went on to lead a new coalition government, making it the second European populist party after Austria's Freedom Party to achieve that feat.

Though SIC experience did not prevent the rise to power of a populist party, it contributed to its demise when the Panama Papers scandal broke in 2016 and the populist Prime Minister found himself on the front pages of international news outlets. The Panama Papers leak brought out from the shadows assets, including claims on the failed banks, stashed by the Prime Minister's wife in a company in Tortola—a British Virgin Island that had become a byword in Iceland for the opaque ownership structures and corrupt business practices described by the SIC. This was particularly problematic because the Prime Minister was a central actor, and now on both sides of the table, in recently concluded negotiations with the creditors of the failed banks—the proceeds of which were to compensate for the tax revenues spent on his across-the-board mortgage write downs. The scandal was not only a replay of the behaviour documented by the SIC, it also brought into light the Prime Minister's failure to adhere to the new ministerial code of conduct, which would have required him to declare the assets. The code of conduct, which derived directly from the SIC recommendations, had painfully revealed its relevance. Following popular protests which were fuelled by his brazen disregard of the lessons of the crisis (Hjalmarsson, 2016), the Prime Minister was forced out of government and then from his party, which veered away from the populist path.

### 3.7 CONCLUSION

With no prior experience of official mechanisms to drive political learning, political elites in Iceland showed a willingness to innovate when faced with an unprecedented crisis. The mechanism that they established, the SIC, is an example of an effective truth commission. It provided Icelandic society with answers to the questions that arose in the aftermath of the country's economic collapse. It produced a widely-accepted diagnosis of the causes of the crisis, held institutions and decision makers to account, and proposed reforms to address the vulnerabilities that had led to the crisis.

In considering the relevance of the SIC's experience for practice in other countries or other kinds of crisis, it is important to note that each case is different and case-specific conditions ensure that 'virtually no two compilations of global truth commission

experience are the same' (Wiebelhaus-Brahm, 2010: 2). Obviously, efforts to streamline or push for a 'one-size-fits-all' approach to designing TCs should be avoided (McEvoy, 2007; Nagy, 2008). Politics is creative work and its innovative potential, never greater than in times of crisis, should be unleashed.

That said, this analysis has sought to move beyond the endogeneity of the Icelandic case by underscoring that the effectiveness a TC in an established democratic state is shaped by political elites' ability to negotiate the competing objectives of institutional and instrumental learning. The outcome depends on: how successful they are in divorcing partisan and punitive motives from the learning process; whether they can learn lessons from institutional failure rather than policymaking failure; whether they give institutional accountability precedence over personal accountability; and whether they manage to keep the need for institutional reforms and rebuilding the public's trust as their prime concern, while resisting temptations to create politically expedient narratives and seek only to assign blame.

Moreover, the impact assessment approach developed to analyse the SIC can stimulate thinking about the design of TCs in other established democratic states, and it brings focus to how the TC process itself shapes the type of learning that emerges. The observable indicators that the approach provides can structure such thinking, allowing us to make an assessment, at each step in the process, of the learning objectives involved and how they shape the TC's performance and condition its impact.

More concretely, the SIC has a number of design elements worth highlighting. The inclusion of the WGE was an innovation that widened the scope of the investigation to embrace moral and ethical questions regarding how a society can lose its bearings during an economic boom. This is a delicate exercise, but it is one that can create a narrative that the public connects with and can reflect upon based on its own lived experiences. The lifting of banking secrecy was another element that proved to be decisive to the learning that the SIC fostered. Access to millions of data points from the failed banks allowed the commission to conduct thorough forensic investigations

that revealed the broad features and causes of the crisis, and the more intimate dynamics behind specific decisions. After a financial crisis, bankers will naturally resist giving priority to the public interest and to transparency at the expense of the secrecy they are accustomed to enjoying. Importantly, the Icelandic case shows that much can be achieved when secrecy is lifted, and reveals whom that secrecy ultimately protects. A third element that deserves mention is the way in which the SIC conducted its hearings. By holding them in private the SIC prioritised disclosure and the learning of lessons over defensiveness and political or other posturing. The interesting twist the SIC took was to compensate for this lack of transparency by including extended verbatim excerpts of the testimonies in the final report. Lastly, the SIC was not without its faults. They include that the mandated follow-up mechanisms were not robust and did not ensure co-ordination or monitoring of the implementation of reforms; and more time and attention should have been given to tightening up the recommendations.

Finally, two overlapping questions emerge from the SIC experience that relate to its external relevance: one of path dependency, and one of the SIC being an extreme case of one. It was Iceland's fortune that at a time of crisis all significant political formations agreed on the need for a thorough and independent investigation. This consensus set the stage for the type of learning that emerged, and it sustained the SIC process until its conclusion. This raises an issue of path dependency. Can societies where public trust is not as high replicate Iceland's favourable outcome? If not, can instrumental dynamics at the outset of the process be overcome by the design and performance of the TC later on? If the answer is no, will the Icelandic case remain an idiosyncratic case of an effective TC established in a democratic state in response to an economic crisis? Time will tell. What is certain is that economic crises will continue to wash over established democracies. In the hardest-hit countries the need for answers to the backward-looking questions that TC's can address and the need for the goods they deliver —a diagnosis of the crisis and a blueprint for reforms—will be as strongly felt as after the Great Recession. The need for a mechanism to drive that learning will be correspondingly strong.

## CONCLUDING DISCUSSION

The promise that transitional justice brings to the study of economic crises in established democratic states is one of a new perspective and practices.

In the midst of the political fluidity and public outrage that follows economic crises, transitional justice can bring a new perspective to dealing with the dilemma that political elites –and society as a whole –are up against: do we move on and focus on forward looking policies to secure a recovery, or do we need to deal with the past in order to build back better? If there is a will (in the halls of government or in the streets) to deal with the past, the perspective of transitional justice provides direction for the work that needs to be done: establish the truth about what went wrong and why; ensure that those responsible are held accountable; provide reparations to those worst hit; and push through institutional reforms that guard against the recurrence of crisis and strengthen institutions. The transitional justice perspective brings depth to our understanding of the dilemma and has the potential to concentrate minds. It shows us how the dilemma can be deconstructed and engaged with, instead of letting it drop as calls to ‘move on’ or for ‘heads to roll’ rise to a crescendo and then fade, having pre-empted learning from the past.

The mechanisms of transitional justice convert this perspective into practice. The three chapters of this dissertation –with their three different levels of analysis –have sought to show how this can work in established democracies after economic crises.

The first chapter showed that the effectiveness of the truth commissions in Iceland, Ireland and Greece was conditioned by the type of learning –institutional or instrumental – that guided their adoption and implementation. Trust and timing matter and there is a relationship between the two. In Iceland, where pre-crisis levels of trust were high, political elites were able –early on –to forge a multi-party consensus on the need to delve into the past. The work of forging and sustaining such a consensus requires that instrumental objectives –creating favourable political narratives, and engaging in blame games for electoral gains –are suppressed. Indeed,

political elites in Iceland agreed that for the truth commission to have the desired impacts –reform, accountability, trust –it would have to be independent, insulated from party politics, armed with a broad mandate and strong investigative powers, and its recommendations carried forward. Conversely, in Greece and Ireland where levels of trust were lower, truth commissions did not emerge until in the later stages of the crisis: after critical elections (Ireland) or just before a critical political event (IMF bailout). The result, their deployment by ascendant political elites to advance instrumental objectives, shaped their performance and led to sub-optimal outcomes. Moreover, commissions that are instrumentalised in this way can backfire politically when they reveal (Ireland) or threaten to reveal (Greece) inconvenient truths about the elites that set them up. Ultimately, the relationship between trust and timing underscores the way in which truth commissions are conditioned by the political context in which they are created. On the other hand when they are guided by institutional objectives and by learning from the past and when they are effective (as was laid out in Chapter 3) they can exert a significant influence on the political transition and help consolidate a new political dispensation.

The case of study of Iceland (Chapter 2) described how the adoption and implementation of a broad range of transitional justice mechanisms worked in an established democracy. The relationship between trust and timing that the first chapter described in a cross country context, holds up across mechanisms in a single country. Mechanisms that were adopted early in the crisis when trust was high (the truth commission and the Office of the Special Prosecutor), and on the basis of cross-political consensus, proved to be effective. But mechanisms that were adopted later –after political trust had been eroded and elections had shifted the balance of power –delivered sub-optimal results. As with the truth commissions in Ireland and Greece, they backfired on the political elites that set them up. The trial of the former Prime Minister and the push for constitutional reform hardened the political opposition to the new government, which burned through political capital to implement them, with –ultimately –little to show for it. The reparative debt ‘correction’ measure was a



potent electoral campaign promise, but its fulfilment returned no increase in public support for the parties responsible for it and it was a wasteful use of taxpayers funds.

The most fascinating aspect of the Icelandic case is not the success or failure of individual measures but the broad range of mechanisms that was adopted, and the manner in which they were adopted. The political elites *innovated in isolation*: they adopted a broad range of mechanisms that –unbeknownst to them –mirrored the *holistic* approach that is viewed as best practice in the field of transitional justice. This reinvention of the wheel of transitional justice demonstrates the creativity of democratic politics and reveals how the exigencies of an emergency can enrich the inventory of practices in an established democracy. More broadly, this instance of innovation in isolation demonstrates the robustness of transitional justice as a democratic response to a difficult past, and it widens the scope of application the practices that transitional justice prescribes. The Icelandic case invites us to expand our assumptions about *whom* transitional justice applies to (established democratic states) and for *what* end (responding to economic crises).

The last chapter narrowed our focus to a single mechanism, allowing an in-depth appraisal of the merits of this expansion of scope. It identified how an effective truth commission –established after an economic crisis in an established democratic state – can have a direct and significant impact on the reform of political and financial systems, and it illustrated the potential it has to clear and hold space that would otherwise be open to populist abuse. These are tangible results. By drawing on the existing transitional justice literature on truth commissions, and by projecting its findings through our prism of institutional learning, we can also see the ideational merits of widening the scope of the application of transitional justice and how it can inform future practice. That is, that the effectiveness of truth commissions as a response to economic crisis in an established democratic state depends on: ‘how successful they are in divorcing partisan and punitive motives from the learning process; whether they can learn lessons from institutional failure rather than policymaking failure; whether they give institutional accountability precedence over

personal accountability; and whether they manage to keep the need for institutional reforms and rebuilding the public's trust as their prime concern, while resisting temptations to create politically expedient narratives and seek only to assign blame' (Chapter 3: Conclusion).

#### *Limitations*

The literature on applying transitional justice to economic crises in established democracies is a new area of scholarship. This means that although the study can take its bearings from the rich transitional justice framework to direct the searchlight, it is in virgin territory when it comes to applying that framework to economic crises in established democratic states. The actors are different and the subject is different. This means that research findings could not be assessed by comparison with previous theorizing. Consequently the dissertation is largely exploratory in approach. Its interpretations are necessarily partial with corresponding blind spots [see suggestions for further research, below]. The theory-building here should be understood as a step towards developing theoretical constructs (George and Bennet: 75; Eckstein 1992: 144) rather than an attempt to discover universal or predictable mechanisms. In particular the theoretical framework (institutional- and instrumental learning), advanced in Chapter 1 and built on in later chapters, offers a promising avenue for future research. In this respect the findings of Chapter 2, which unpacks a range of experiences (some good, some bad) in a single country, are also encouraging.

Secondly, the universe of cases is small (Chapter 2.1) and within that universe this dissertation draws mainly on the experience of a single country. Moreover, the two truly effective mechanisms discussed (the truth commission and the Office of the Special Prosecutor) were deployed in Iceland alone. This case selection can be justified on the grounds that if there were no significant positive outcomes in Iceland –which adopted the most comprehensive range of mechanisms –it would be most unlikely that positive outcomes would be seen in less proactive countries. The Icelandic case proved illuminating, especially since it displayed a range of outcomes. Nonetheless, unless and until additional cases become available, the Icelandic

experience can be criticised for being an outlier. Recognising this, the dissertation sought to provide avenues out of the endogeneity of the Icelandic case. The *innovation in isolation* that characterised political elites' adoption of a wide range of mechanisms demonstrates that economic crises generate many of the needs that transitional justice mechanisms are designed to address. While the conditions that facilitated the adoption of transitional justice mechanisms in Iceland may not be present in future crises in other states, the fundamental dilemma and the set of demands are likely to be present –and so is the need for a mechanism to address them.

A last set of limitations concerns the research design. The aim was to make a broad and practical contribution to the application of transitional justice to economic crises in established democratic states. The research moved from a cross-country comparison, to an in-country comparison, to a nuts-and-bolts assessment of a single mechanism. While this illustrated the applicability of the transitional justice framework at different levels of analysis, it also came at a cost. A more consistent research design, for example one based on a structured comparison of similar cases with different outcomes (e.g. Iceland and Ireland), might have illuminated better the obstacles and constraints that different countries face in adopting and implementing transitional justice mechanisms and thrown light on whether –and if so how –these obstacles can be overcome in the future. Also, while drawing extensively on the transitional justice literature, the framing of this study did not allow an exploration of the differences between seeking transitional justice after economic crisis in an established democracy and doing so after conflict in an emerging democracy.

#### *Future research avenues*

The above limitations, as well as aspects of the problem that were not taken up here open up avenues for further research.

First, this study was largely silent on how international institutions may have constrained or facilitated the adoption of mechanism that deal with the past. Much of the global promotion of transitional justice norms and practices has been channelled

through international institutions (Skaar & Wiebelhaus-Brahm, 2013; Muck & Wiebelhaus-Brahm, 2011). The same development should not, however, be anticipated in our context. Economic crises and crimes do not create international moral and human rights obligations, and international institutions are apprehensive of being seen as interfering in the internal affairs of established democracies. Nevertheless, they can be key actors as is illustrated by the roles of the IMF and the European Union (EU) during the Great Recession. Did these international institutions and the conditions of their bailout programs restrain domestic efforts to delve in the past? Another question is whether the outcomes that transitional justice mechanisms deliver (for example: personal and institutional accountability, agenda of reforms, and an established and agreed diagnosis of the past) can complement or support the work of international institutions in crisis-hit countries. If there are significant benefits to be had, what scope do international institutions have to advocate for the adoption and implementation of mechanisms that deal with the past?

Second, further research into reparations after economic crisis is timely. Such a study can bring attention to how reparative measures taken by governments in response to economic crisis can: influence the diagnostic and prognostic framing of the crisis; define who are the worthy and unworthy victims, and who are the perpetrators; show how transitional justice entrepreneurship can be a key resource in electoral strategies of populists, one that allows them exploit public's sense of unfairness with simple solutions to complex problems; and show how actors, who advocate for responsible and targeted measures, can engage with economic victimhood and reparative discourses.

Third, further research awaits on the differences between seeking transitional justice after conflict and after economic crisis. As mentioned, such research can take the form of comparing the deployment mechanisms in the different contexts to better assess commonalities and divergences in practices. The expansion of the application of transitional justice that is proposed here also intersects with the *critical turn* in transitional justice (Sharp, 2013; Sharp, 2019). In the first instance the expansion

intersects with the notion that transitional justice is steeped in Western liberalism and Western conceptions of justice (Millar, 2011; Nagy, 2008; Mani, 2002) and applied top-down and from ‘the outside’. There is now an opportunity to turn the tables: why does the same set of prescriptions not apply when a developed economy collapses and democracy comes under pressure? Can we seek inspiration in what others have practiced? The second intersection relates to the critical turn’s call for expanding the relatively narrow horizon of paradigmatic transitional justice to the broader horizon of social justice. The charge is that the transitional justice framework has been biased towards civil and political rights and excluded issues of gender, cultural, structural and economic injustices (Carranza, 2008; Cavallaro & Albuja, 2008; Muvingi, 2009). The expansion of transitional justice to economic crises speaks directly to the last item on that list and has its focus on actors (established democracies) who exert hegemonic influence on economic developments and injustices.

*Practical implications for future practice*

A number of recommendations can be drawn from this study:

*If political elites are to engage effectively with the dilemma that economic crisis causes and learn from the past they need to ‘act and act fast’.* If political elites are to respond effectively to demands for truth, accountability, and reforms, the speedy adoption of mechanisms that deal with the past is crucial. The relationship between trust and timing of adoption underscores that there is a short window of opportunity to deploy mechanisms which are supported by political consensus and in which instrumental objectives are suppressed. Where political trust is low –and the need to learn institutional lessons is correspondingly greater –this window is even shorter, if indeed open at all. In all cases it becomes harder to respond effectively when the polarizing pressures of the crisis begin to exert their full impact. Moreover, quick adoption opens the door for a tactic for dealing with politically-charged demands –put them ‘into a box’ that can be opened later. Such a tactic can help clear the table at a crucial

time in the crisis, and allow political elites to direct their full attention to the immediate problems and hardships created by the crisis.

*Political elites who are tempted to pursue their own instrumental objectives at the expense of institutional ones would be advised to think twice.* Mechanisms that deal with the past after a crisis are powerful tools that create and frame narratives. They assign responsibility and blame; and they have the power to shape a new political dispensation. However, a clear lesson from this study is that mechanisms which are guided by instrumental objectives often backfire on the those who set them up. They can reveal inconvenient truths about the parties establishing them; their polarizing impact can curtail their ability to build consensus within their own parties and with the political opposition; by exacerbating divisions they undermine effective decision-making at times of economic stress; and their adoption and implementation requires spending significant political capital for –ultimately –ineffective outcomes.

*Don't prosecute politicians for policy failures.* In Iceland the trial of a former Prime minister –the only trial of a political leader for actions taken in the events leading up to the Great Recession –demonstrates the perils of using courts rather than ballot boxes to hold policy-makers to account for their policies. The trial showed the ineffectiveness of instrumental learning: it produced little new or useful information about the past; led to no significant reforms; needlessly polarized politics; damaged consensus-building, and slowed down the national healing. Moreover, the threat of retroactive criminal liability of policy-makers is liable to weaken decision making at times of economic crisis when decisiveness is needed, and decisions need to be made based on limited precedent and inadequate information. A trial can also air and legitimise ex post facto rationalisations that are inaccurate, and it may give weight to populist calls for 'more heads to roll'. The lesson is not that political elites should be let off the hook. It is that mechanisms like truth commissions are better suited to carry out serious and even-handed investigations that publish the truth about the causes of the crises and those responsible for it, and convert those findings into useful lessons and reforms.

*Truth commissions are effective when they are guided by the objectives of institutional learning, and they should be established in the early stages of the crisis.* The effectiveness of truth commissions depends on the extent to which political elites manage to navigate away from instrumental objectives of learning and towards institutional objectives of learning. Their impact also depends on how institutional objectives are built in to their design and implementation. It depends, for example, on how successful they are in excluding partisan and punitive motives from the learning process, on how able they are to keep their focus on institutional failure so the stage can be set for reforms, and on how successful they are in ensuring the primacy of securing the public's trust in their work. For many reasons timing is of the essence. There is a narrow window of opportunity to ensure that institutional objectives guide the process. Popular support for truth-recovery efforts is highest immediately after the crisis. Evidence is easier to find and witnesses' memories are more reliable when events are still fresh at hand. And finally quick adoption makes it possible for truth commissions to deliver their findings when the recovery is still underway, public interest is still high, and the atmosphere is still ripe for reforms.

*Truth recovery should precede prosecutions for white-collar crimes.* Truth commissions and prosecutorial authorities play different roles in meeting post crisis demands for truth and in ensuring accountability—both institutional and personal—after economic crisis. Truth commissions give a broad picture of the causes of the crisis, which may be complex, and hold state institutions to account, while prosecutions of economic crimes hold individuals to account and provide a narrower and more detailed—though not always trustworthy—truth recovery. The two mechanisms can be mutually reinforcing, but only if they are correctly sequenced. First truth, then justice. Truth commissions need to provide witnesses with guarantees and a safe space that allow them to give the whole truth. If prosecutions precede truth-recovery, or are conducted simultaneously, then witnesses are likely to take up more guarded positions and conceal information. Correct sequencing also enables truth commissions to unearth information that can direct and sharpen the investigative focus of

prosecutorial authorities. Moreover, when truth commissions lift the veil on corrupt practices they increase public pressure for moving ahead with prosecutions and create both momentum and political conditions for allocating sufficient resources to prosecutorial authorities.

*In conclusion, learn from the past.*

Economic crises present us with opportunities to learn from the past. But the rupture they cause –which makes politics fluid and puts a range of possibilities on the table – is short lived. The window of opportunity soon closes, and normality reasserts itself with unhealed injuries that come from not learning from the past.

The transitional justice framework invites us to be alert to the opportunities that a crisis presents and better equipped to make use of them. The framework offers us a set of mechanisms to help solve concrete problems that arise. It makes us *available* at a time when the moment is brief and defining choices are made. Available to highlight the advantages of learning from the past rather than just moving on, and available to help devise mechanisms that promote learning and reshape politics. In this way countries, including established democracies, can learn not only from their individual histories but also from those who have taken this step before.



## BIBLIOGRAPHY

- Althingi (2008) *Act 142/2008: Lög um rannsókn á aðdraganda og orsökum falls íslensku bankanna 2008 og tengdra atburða [Act on the Investigation of the Background and Causes of the Collapse of the Icelandic Banks in 2008 and Related Events]*. Available at: <http://www.althingi.is/altext/138/s/1537.html> (accessed 22 January 2016).
- Althingi (2010a) *Skýrsla þingnefndar til að fjalla um skýrslu rannsóknarnefndar Alþingis [Parliamentary Report on the Report by the Icelandic Investigative Commission]*. Available at: <http://www.althingi.is/altext/138/s/1501.html> (accessed 22 January 2016).
- Althingi (2010b) *The main conclusions of the Working Group on Ethics*. Available at: [https://www.rna.is/media/skjol/WorkingGroupOnEthics\\_Summary.pdf](https://www.rna.is/media/skjol/WorkingGroupOnEthics_Summary.pdf) (accessed 20 January 2020).
- Althingi (2011) *Svar dómsmálaráðherra við fyrirspurn frá Össuri Skarphéðinssyni um stöðu manna sem grunaðir eru um refsiverða háttsemi í skilningi 1. gr. laga um embætti sérstaks saksóknara, þskj 427, 198. mál..* Available at: <https://www.althingi.is/slttext/144/s/0427.html> (accessed 10 January 2020).
- Bakiner, O. (2014) Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society. *The International Journal of Transitional Justice*, 8(1), pp. 6-30.
- Benediktsdóttir, S., Danielsson, J. & Zoega, G. (2011) Lessons from a Collapse of a Financial System. *Economic Policy*, 26(66), pp. 183-235.
- Benediktsdóttir, S., Eggertsson, G. B. & Thorarinsson, E. (2017) The Rise, Fall, and Resurrection of Iceland: A Postmortem Analysis of the 2008 Financial Crisis. *Brookings Papers on Economic Activity*, Fall, pp. 191-281.
- Benediktsson, B. (2010) *Umræður um skil á skýrslu rannsóknarnefndar Alþingis, Bjarni Benediktsson*. Available at: <https://www.althingi.is/altext/raeda/138/rad20100412T151817.html> (accessed 20 January 2020).
- Bergmann, E. (2015) Populism in Iceland: Has the Progressive Party turned populist?. *Icelandic Review of Politics and Administration*, 11(1), pp. 33-54.
- Bermeo, N. (1992) Democracy and the Lessons of Dictatorship. *Comparative Politics*, 24(3), pp. 273-291.

- Bank of International Settlements (BIS) (2020) *The Banking Crisis in Iceland*. Available at: <https://www.bis.org/fsi/fsicms1.pdf> (accessed 14 November 2020).
- Blyth, M. (2001) The Transformation of the Swedish Model: Economic Ideas, Distributional Conflict, and Institutional Change. *World Politics*, 54(1), pp. 1-26.
- Boettke, P. J. & Coyne, C. J. (2007) Political economy of forgiveness. *Society*, 44(2), pp. 53-59.
- Bohle, D. (2018) Mortgaging Europe's Periphery. *Studies in Comparative International Development*, Volume 53, pp. 196-217.
- Boin, A. & Hart, P. ' (2003) Public Leadership in Times of Crisis: Mission Impossible?. *Public Administration Review*, 63(5), pp. 544-553.
- Boin, A., McConnell, A. & 't Hart, P. (2008) *Governing after Crisis: The Politics of Investigation, Accountability and Learning*. Cambridge: Cambridge University Press.
- Boraine, A. (2006) Transitional justice: a Holistic interpretation. *Journal of International Affairs*, 60(1), pp. 17-27.
- Bouris, E. (2007) *Complex Political Victims*. Bloomfield: Kumarian Press.
- Brahm, E. (2007) Uncovering the Truth: Examining Truth Commission Success and Impact. *International Studies Perspectives*, 8(1), pp. 16-35.
- Calhoun, N. A. (2004) *Dilemmas of Justice in Easter Europe's Democratic Transitions*. New York: Palgrave.
- Canovan, M. (1999) Trust the People! Populism and the Two Faces of Democracy. *Political Studies*, 47(1), pp. 2-16.
- Carranza, R. (2008) Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?. *International Journal of Transitional Justice*, 2(3), pp. 310-330.
- Cavallaro, J. L. & Albuja, S. (2008) The Lost Agenda: Economic Crisis and Truth Commissions in Latin America and Beyond,. In: K. McEvoy & L. McGregor, eds. *Transitional Justice From Below: Grassroots Activism and the Struggle for Change*. Oxford: Hart Publishing.
- Central Bank of Iceland (2011) *Central Bank of Iceland hires new director*. Available at: <https://www.cb.is/publications/news/news/2011/10/19/>

Central-Bank-of-Iceland-hires-new-director-/ (accessed 19 December 2020).

- Chapman, A. R. & Ball, P. (2001) The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala. *Human Rights Quarterly*, 23(1), pp. 1-43.
- Chwieroth, J. (2010) How Do Crises Lead to Change? Liberalizing Capital Controls in the Early Years of New Order Indonesia. *World Politics*, 62(3), pp. 496-527.
- Collier, P. (1993) The Comparative Method. In: A. Finifter, ed. *Political Science: The State of The Discipline II*. Washington, DC: American Political Science Association.
- Contiades, X. (2016) *Constitutions in the Global Financial Crisis: A Comparative Analysis*. s.l.:Routledge.
- Corbett, J. & Veenendaal, W. (2018) *Democracy in Small States: Persisting against all odds*. Oxford: Oxford University Press.
- Cullen, J. & Johnsen, G. (2015) Promoting bank stability through compensation reform: lessons from Iceland. *Stjórnmal og Stjórnsýsla*, 11(2), pp. 333-354.
- Culpepper, P. (2008) The Politics of Common Knowledge: Ideas and Institutional Change in Wage Bargaining. *International Organization*, 62(1), pp. 1-33.
- Dancy, G., Hunjoon, K. & Wiebelhaus-Brahm, E. (2010) The Turn to Truth: Trends in Truth Commission Experimentation. *Journal of Human Rights*, 9(1), pp. 45-64.
- Diamond, L. (1999) *Developing Democracy: Toward Consolidation*. Baltimore: John Hopkins University Press.
- European Banking Association (EBA) (2020) *Risk Dashboard: Data as of Q2 2020*. Available at: [https://eba.europa.eu/sites/default/documents/files/document\\_library/Risk%20Analysis%20and%20Data/Risk%20dashboard/Q2%202020/933053/EBA%20Dashboard%20-%20Q2%202020.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/Risk%20Analysis%20and%20Data/Risk%20dashboard/Q2%202020/933053/EBA%20Dashboard%20-%20Q2%202020.pdf) (accessed 16 November 2020).
- Eckstein, H. (1992) *Regarding Politics: Essays on Political Theory, Stability, and Change*, Berkeley: University of California Press.
- Ellinas, A. & Lamprinou, I. (2014) Political Trust in Extremis. *Comparative Politics*, 46(2), pp. 231-250.

- Ellinas, A. (2013) The Rise of Golden Dawn: The New Face of the Far Right in Greece. *South European Society & Politics*, 18(4), pp. 543-565.
- Elster, J. (1992) *Retribution and Reparation in the Transition to Democracy*. Berkeley: University of California Press.
- Elster, J. (2016) Icelandic constitution-making in comparative perspective. In: V. Ingimundarson, P. Urfalino & I. Erlingsdóttir, eds. *Iceland's Financial Crisis: The politics of blame, protest, and reconstruction*. New York: Routledge, pp. 187-202.
- Eyjan (2010) *Þjóðin klofin vegna ákæru á hendur Geir Haarde. Svipaður fjöldi vill hætta við og halda áfram*. Available at: <http://eyjan.pressan.is/2012/02/13/thjodin-klofin-vegna-akaeru-a-hendur-geir-haarde-svipadur-fjoldi-vill-haetta-vid-og-malid-afraam/> (accessed January 2018).
- Financial Services Authority (FSA) (2008) *The Supervision of Northern Rock: A Lessons Learned Review*, London: FSA.
- Financial Services Authority (FSA) (2009) *The Failure of the Royal Bank of Scotland*, London: FSA.
- Financial Services Authority (FSA) (2011) *The Turner Review: A Regulatory Response to the Global Banking Crisis*, London: FSA.
- Financial Times (2010) *Iceland arrests former Kaupthing CEO*. Available at: <https://www.ft.com/content/186a2142-594e-11df-99ba-00144feab49a> (accessed January 2018).
- Fjármálaeftirlitið (FME) (2011a) *Reglur um kaupaukakerfi undirritaðar*. Available at: <https://www.fme.is/media/frettir/04.07.2011Reglur-um-kaupaukakerfi,-undirritadar.pdf> (accessed 16 November 2020).
- Fjármálaeftirlitið (FME) (2011b) *Rules on Credit provided by a Financial Undertaking to Directors, a Managing Director, Key Employees or Parties with a Qualifying Holding in the Undertaking or Closely Connected to the Afore-mentioned*. Available at: <https://en.fme.is/media/utgefing-efni/Rules-162-2011.pdf> (accessed 12 November 2020).
- Forsætisraduneytið (2010) *Viðbrögð stjórnarsýslunnar við skýrslu rannsóknarnefndar Alþingis, skýrsla starfshóps forsætisráðuneytisins [Report of the Prime Ministry's Working Group on the Responses of the Public Administration to Parliament's Special Investigative Commission Report]*. Available at: <https://www.forsaetisraduneyti.is/media/Skyrslur/Skyrsla-starfshops-6-mai2010.pdf> (accessed 22 January 2018).

- Fourlas, G. N. (2015) No Future without Transition: A Critique of Liberal Peace. *International Journal of Transitional Justice*, 9(1), pp. 109-126.
- Freeman, M. (2006) *Truth Commissions and Procedural Fairness*. Cambridge: Cambridge University Press.
- Frettabladid (2018) *36 manns í samtals 96 ára fangelsi í hrunmálunum*. Available at: <https://www.frettabladid.is/markadurinn/36-manns-i-samtals-96-ara-fangelsi/> (accessed 20 January 2020).
- Gallup (2008) *Trust to ministers (Þjóðarpúls Gallup)*. Available at: [https://cdn.gallup.is/media/documents/thjodarpuls\\_2008\\_12\\_P5TiqqT.pdf](https://cdn.gallup.is/media/documents/thjodarpuls_2008_12_P5TiqqT.pdf) (accessed 20 January 2020).
- Gallup (2010) *Þjóðarpúls Gallup, maí 2010, 5.tbl 18.árg.* Available at: [https://cdn.gallup.is/media/documents/thjodarpuls\\_2010\\_05\\_fBDO4hk.pdf](https://cdn.gallup.is/media/documents/thjodarpuls_2010_05_fBDO4hk.pdf) (accessed 13 October 2020).
- Gallup (2014) *Þjóðarpúls Gallup, desember 2014*. Available at: [https://cdn.gallup.is/media/documents/thjodarpuls\\_2014\\_12\\_fylgi\\_flokk\\_a\\_hX4Y1PH.pdf](https://cdn.gallup.is/media/documents/thjodarpuls_2014_12_fylgi_flokk_a_hX4Y1PH.pdf) (accessed 21 January 2021).
- Gallup (2015) *Þjóðarpúls Gallup, maí 2015*. Available at: [https://cdn.gallup.is/media/documents/thjodarpuls\\_2015\\_05\\_fylgi\\_flokk\\_a\\_AaPoIJT.pdf](https://cdn.gallup.is/media/documents/thjodarpuls_2015_05_fylgi_flokk_a_AaPoIJT.pdf) (accessed 21 January 2021).
- George, A. & Bennett, A. (2005) *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT Press.
- Gijzenbergh, J., Houwen, T., De Jong, W. & Hollander, S. (2012) *Creative Crisis of Democracy*. Brussels: Peter Lang.
- González, E. & Varney, H. (2013) *Truth Seeking: Elements of Creating an Effective Truth Commission*. New York: International Center for Transitional Justice.
- Government of Iceland (2020) *Ráðherranefndir*. Available at: <https://www.stjornarradid.is/rikisstjorn/radherranefndir/> (accessed 19 December 2020).
- Gready, P. & Robins, S. (2019) *From Transitional to Transformative Justice*. Cambridge: Cambridge University Press.
- Greek Debt Committee (2015) *Preliminary Report: Truth Committee on Public Debt*. Available at: <http://www.greekdebttruthcommission.org/index.php> (accessed 10 January 2016).

- Greek Truth Committee Session (2015) *Minutes of the Hellenic Parliament. Athens, Greece*. Available at: <https://www.youtube.com/watch?v=N7WdB2pNyRo>
- Greiff, P. d. (2006) Justice and Reparations. In: P. d. Greiff, ed. *The Handbook of Reparations*. Oxford: Oxford University Press, pp. 451-477.
- Halmi, G. (2017) *The Role of Constitutionalism in Transitional Justice Processes in Central Europe*. Available at: <https://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Halmi/Constitutions-and-TJ.pdf> (accessed 22 January 2019).
- Hayner, P. B. (1994) Fifteen Truth Commissions-1974 to 1994: A Comparative Study. *Human Rights Quarterly*, 16(4), pp. 597-655.
- Hayner, P. B. (2010) *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. 2nd ed. New York and London: Routledge.
- Helleiner, E. (2015) Controlling Capital Flows 'At Both Ends': A Neglected (but Newly Relevant) Keynesian Innovation from Bretton Woods. *Challenge*, 58(5), pp. 413-427.
- Higgins, J. (2016) *The Banking Inquiry Why Ireland Experienced a Systemic Banking Crisis by Joe Higgins TD, Member of the Joint Committee Alternative Analysis and Conclusions to the Report of the Joint Oireachtas Committee of Inquiry into the Banking Crisis*, Dublin: Anti-Austerity Alliance.
- Hillard, N., Kovras, I. & Loizides, N. (2020) The perils of accountability after crisis: ambiguity, policy legacies, and value trade-offs. *Cambridge Review of International Affairs*, Published online: 27 Jan 2020.
- Hjalmarsson, R. & Kovras, I. (2017) *Should we prosecute political leaders after a crisis? Lessons from Iceland*. Available at: <http://blogs.lse.ac.uk/europpblog/2017/12/06/should-we-prosecute-political-leaders-after-a-crisis-lessons-from-iceland/> (accessed January 2018).
- Hjalmarsson, R. (2016) *Chaos in Reykjavík nach Rücktritt vom Rücktritt*. Available at: <https://www.welt.de/politik/ausland/article154065626/Chaos-in-Reykjavik-nach-Ruecktritt-vom-Ruecktritt.html> (accessed 15 November 2020).
- Honig, B. (2009) *Emergency Politics*. Princeton: Princeton University Press.
- Hood, C. (2010) *The Blame Game: Spin, Bureaucracy, and Self-preservation in Government*. Princeton, NJ: Princeton University Press.

- Hutcheson, D. S. (2011) The Seismology of Psephology: ‘Earthquake Elections’ from the Folketing to the Dáil. *Representation*, 47(4), pp. 471-488.
- Ignatieff, M. (1998) *The Warrior's Honor: Ethnic War and the Modern Conscience*. New York: Holt Paperbacks.
- International Monetary Fund (IMF) (2008) *Iceland : Request for Stand-By Arrangement: Staff Report; Staff Supplement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for Iceland*, Washington: International Monetary Fund.
- International Monetary Fund (IMF) (2009) *Iceland : Staff Report for First Review under Stand-By Arrangement and Requests for Extension of the Arrangement, Waivers of Nonobservance of Performance Criteria, and Rephasing of Access*, Washington: International Monetary Fund.
- International Monetary Fund (IMF) (2012) *World Economic Outlook, Chapter 3: Dealing with Household Debt*, Washington: International Monetary Fund.
- Ingimundarson, V. (2010) “A Crisis of Affluence: The Politics of an Economic Breakdown in Iceland. *Irish Studies in International Affairs*, 21(1), pp. 57-69.
- Ingimundarson, V. (2016) The politics of transition, memory, and justice: Assigning blame for the crisis. In: V. Ingimundarson, P. Urfalino & I. Erlingsdottir, eds. *Iceland's Financial Crisis: The politics of blame, protest, and reconstruction*. Oxon: Routledge, pp. 140-155.
- Johnsen, G. (2014) *Bringing Down the Banking System: Lessons from Iceland*. New York: Palgrave Mcmillan US.
- Jónsdóttir, B. (2010) *Umræður um á skýrslu rannsóknarnefndar Althingis, forsætisráðherra (Jóhanna Sigurðardóttir)*. Available at: <https://www.althingi.is/altext/138/04/r12154933.shtml> (accessed 20 January 2020).
- Kalyvas, S. (2015) *Modern Greece: What Everyone Needs to Know*. Oxford: Oxford University Press.
- Kirby, P. & Murphy, M. P. (2011) *Towards a Second Republic: Irish Politics after the Celtic Tiger*. London: Pluto Press.
- Kochanski, A. (2020) Mandating Truth: Patterns and Trends in Truth Commission Design. *Human Rights Review*, 21(2), pp. 113-137.
- Kovras, I. & Loizides, N. (2014) The Greek Debt Crisis and Southern Europe: Majoritarian Pitfalls?. *Comparative Politics*, 47(1), pp. 1-20.

- Kovras, I. & Pagliari, S. (2020) Crisis and Punishment? Explaining Politicians' Appetite for Retribution in Post-Crisis Europe. *Comparative Politics*, Published online 30. October.
- Kovras, I. (2017) *Grassroots Activism and the Evolution of Transitional Justice: The Families of the Disappeared*. Cambridge: Cambridge University Press.
- Kovras, I., McDaid, S. & Hjalmarsson, R. (2018) Truth Commissions after Economic Crises: Political Learning or Blame Game?. *Political Studies*, 66(1), pp. 173-191.
- Kritz, N. J. (1995) *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Vol. 1 ed. Washington DC: US Institute of Peace Press.
- Labour (2011) *Towards Recovery: Programme for a National Government 2011–2016*, Dublin: Labour Party.
- Laplante, L. (2013) The Plural Justice Aims of Reparations. In: S. Buckley-Zistel, T. K. Beck, C. Braun & F. Mieth, eds. *Transitional Justice Theories*. s.l.:Routledge, pp. 66-84.
- Leahy, P. (2013) *The Price of Power: Inside Ireland's Crisis Coalition*. London: Penguin.
- Leebaw, B. A. (2008) The Irreconcilable Goals of Transitional Justice. *Human Rights Quarterly*, 30(1), pp. 95-118.
- Lewis, M. (2009) Wall Street on the Tundra. The Implosion of Iceland's Economy. In: G. Carter, ed. *The Great Hangover: 21 Tales of the New Recession from the Pages of Vanity Fair*. New York: Harper Perennial, pp. 203-229.
- Lijphart, A. (1971) Comparative Politics and the Comparative Method. *American Political Science Review*, 65(3), pp. 682-693.
- Madlingozi, T. (2010) On Transitional Justice Entrepreneurs and the Production of Victims. *Journal of Human Rights Practice*, 2(2), pp. 208-228.
- Magarell, L. (2003) Reparations for massive or widespread human rights violations: Sorting out claims for reparations and social justice. In: *Windsor Yearbook of Access to Justice* 22. s.l.:s.n., pp. 85-98.
- Mani, R. (2002) *Beyond Retribution: Seeking Justice in the Shadows of War*. Malden, MA: Polity.
- Mani, R. (2008) Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development. *International Journal of Transitional Justice*, 2(3), pp. 253-265.



- March, J. G. & Olsen, J. P. (1995) *Democratic Governance*. New York: Free Press.
- March, J. G. & Simon, H. A. (1958) *Organizations*. New York: Wiley.
- Marien, S. (2011) Measuring Political Trust Across Time and Space. In: Z. S. Hooghe m., ed. *Political Trust. Why Context Matters*. Colchester: ECPR Press, pp. 13-46.
- Mayer-Rieckh, A. & Varney, H. (2019) *Recommending Change. Truth Commission Recommendations on Institutional Reforms: An Overview*, Geneva: Geneva Centre for Security Sector Governance (DCAF).
- McEvoy, K. & Mallinder, L. (2012) Amnesties in Transition: Punishment, Restoration, and the Governance of Mercy. *Journal of Law and Society*, 39(3), pp. 410-440.
- McEvoy, K. (2007) Beyond Legalism: Towards a Thicker Understanding of Transitional Justice. *Journal of Law and Society*, 34(4), pp. 411-440.
- McGarry, R. & Walklate, S. (2015) *Victims: Trauma, Testimony and Justice*. New York: Routledge.
- Michalowski, S. (2014) *Corporate Accountability in the Context of Transitional Justice*. New York: Routledge.
- Millar, G. (2011) Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional Justice. *Human Rights Review*, Volume 12, pp. 515-35.
- Ministry of Finance (2017) *Skýrsla um niðurfærslu verðtryggðra fasteignalána*. Available at: <https://www.stjornarradid.is/media/fjarmalaraduneyti-media/media/frettatengt2016/2017-01-18-Skyrsla-um-hofudstolslaekkun.pdf> (accessed 15 December 2019).
- Mishler, W. & Rose, R. (2007) Generation, Age, and Time: The Dynamics of Political Learning during Russia's Transformation. *American Journal of Political Science*, 51(4), pp. 822-834.
- Morgunblaðið (2008) Ef við stöndum saman í gegnum þessa erfiðleika, styðjum hvert annað og hagnýtum okkur þau tækifæri sem skapast munu, þá verður íslenska þjóðin öflugri en nokkru sinni fyrr. *Morgunblaðið*, 12 October, pp. 10-11.

- Morgunbladid (2018) *23 mál á 10 árum og 6 enn ólokið*. Available at: [https://www.mbl.is/frettir/innlent/2018/10/07/23\\_mal\\_a\\_10\\_arum\\_og\\_6\\_enn\\_olokid/](https://www.mbl.is/frettir/innlent/2018/10/07/23_mal_a_10_arum_og_6_enn_olokid/) (accessed 20 January 2020).
- Muck, W. & Wiebelhaus-Brahm, E. (2011) *Patterns of Transitional Justice Assistance Among the International Community*. Available at: <https://ecpr.eu/Filestore/PaperProposal/98ac8b9c-2fba-48d4-94b4-7997a922dff7.pdf> (accessed 20 January 2020).
- Muvingi, I. J. (2009) Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies. *International Journal of Transitional Justice*, 3(2), pp. 163-182.
- Nagy, R. (2008) Transitional Justice as a Global Project: Critical Reflections. *Third World Quarterly*, 29(2), pp. 275-289.
- Nordal, S. (2016) Constitutional revision. In: V. Ingimundarson, P. Urfalino & I. Erlingsdottir, eds. *Iceland's Financial Crisis: The politics of blame, protest, and reconstruction*. New York: Routledge, pp. 220-230.
- O'Donnell, G. A. (2004) Why the rule of law matters. *Journal of Democracy*, 15(4), pp. 32-46.
- Oireachtas (2010a) *Preliminary Report on the Sources of Ireland's Banking Crisis*, Dublin: The Stationery Office.
- Oireachtas (2010b) *The Irish Banking Crisis: Regulatory and Financial Stability Policy, 2003–2008*, Dublin: The Stationery Office.
- Oireachtas (2011) *Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland*, Dublin: The Stationery Office.
- Oireachtas (2015) *Terms of Reference of the Irish Banking Inquiry*. Available at: <https://inquiries.oireachtas.ie/banking/about-the-inquiry/terms-of-reference> (accessed 10 December 2015).
- Oireachtas (2016) *Report of the Joint Committee of Inquiry into the Banking Crisis (Volume 1)*, Dublin: Stationery Office.
- Olafsson, J. (2016) The Constituent Assembly: A study in failure. In: V. Ingimundarson, P. Urfalino & I. Erlingsdottir, eds. *Iceland's Financial Crisis: The politics of blame, protest, and reconstruction*. New York: Routledge, pp. 252-272.
- Olsen, T. D., Payne, L. A. & Reiter, A. G. (2010) *Transitional Justice In Balance Comparing Processes, Weighing Efficacy*. Washington DC: United States Institute of Peace.

- Palan, R. (2006) *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*. Ithaca, NY: Cornell University Press.
- Panizza, F. (2014) In: 'Everybody Out', 'We Are Fantastic': *The Politics of Financial Crises in Argentina and Uruguay 2001–2003*. Abingdon: Routledge, Taylor & Francis Group, pp. 27-46.
- Papagiannis, K. (2015) *Eric Toussaint: The Audit Will Reveal What Really Happened in Greece the past Years*. Available at: <http://cadtm.org/Eric-Toussaint-The-audit-will> (accessed 22 January 2016).
- Pappas, T. (2014) *Populism and Crisis Politics in Greece*. Basingstoke: Palgrave Macmillan.
- Piketty, T. (2014) *Capital in the Twenty-First Century*. Cambridge, MA: Belknap Press.
- Prime Minister's Office (2009) *Government Coalition Platform of the Social Democratic Alliance and Left-Green Movement*. Available at: <https://www.government.is/news/article/2009/05/19/Government-Coalition-Platform-of-the-Social-Democratic-Alliance-and-Left-Green-Movement/> (accessed 25 November 2019).
- Prime Minister's Office (2020) *Skýrsla forsætisráðherra um ábendingar sem varða stjórnysluna í rannsóknarskýrslum Alþingis um orsakir falls íslensku bankanna 2008, orsakir erfiðleika og falls sparisjóðanna og Íbúðalánasjóð og viðbrögð við þeim*. Available at: <https://www.althingi.is/altext/pdf/151/s/0438.pdf> (accessed 19 December 2020).
- Przeworski, A. & Teune, H. (1970) *The Logic of Comparative Social Inquiry*. New York: Wiley.
- Ríkisendurskoðun (2016) *Sérstakur saksóknari*. Available at: <https://rikisendurskodun.is/wp-content/uploads/2016/11/SU-Serstakur-saksoknari.pdf> (accessed January 2018).
- Robinson, I. (2015) Truth commissions and anti-corruption: Towards a complementary framework?. *International Journal of Transitional Justice*, 9(1), pp. 33-50.
- Roht-Arriaza, N. (2014) *Reparations and Economic, Social, and Cultural Rights: Justice and Economic Violence in Transition*. s.l.:Springer.
- Ross, S. (2015) *Enda's Banking Inquiry Lap of Honour Turns into Ambush*. *Irish Independent*. Available at: <http://www.independent.ie/opinion/columnists/>

shane-ross/endas-banking-inquiry-lap-of-honour-turns-into-ambush-31404174.html (accessed 22 January 2016).

- Satori, G. (1970) Concept Misinformation in Comparative Politics. *American Political Science Review*, 64(4), pp. 1033-53.
- Scharf, M. (1996) The Scope of the International Legal Obligation to Prosecute Human Rights Crimes. *Law and Contemporary Problems*, 59(4), pp. 41-61.
- Segovia, A. (2006) Financing Reparations Programs: Reflections from International Experience. In: P. d. Greiff, ed. *The Handbook of Reparations*. Oxford: Oxford University Press, pp. 650-675.
- Sharp, D. N. (2013) Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice. *Harvard Human Rights Journal*, Volume 26, pp. 149-178.
- Sharp, D. N. (2019) What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice. *International Journal of Transitional Justice*, 13(3), pp. 570-589.
- Special Investigation Committee (SIC) (2010) *Report of the Special Investigation Commission*, Reykjavik: Althingi.
- Sigurdardottir, J. (2010). *Umræður um á skýrslu rannsóknarnefndar Althingis, forsætisráðherra (Jóhanna Sigurðardóttir)*. Available at: <https://www.althingi.is/altext/raeda/138/rad20100412T150321.html> (accessed 20 January 2020).
- Sikkink, K. (2011) *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. London: W. W. Norton & Company.
- Skaar, E. & Wiebelhaus-Brahm, E. (2013) The Drivers of Transitional Justice: An Analytical Framework for Assessing the Role of Actors. *Nordic Journal of Human Rights*, 31(2), pp. 127-148.
- Skaar, E., Garcia-Godos, J. & Collins, C. (2016) *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability*. London and New York: Routledge.
- Skaar, E., Malca, C. G. & Eide, T. (2015) *After violence: transitional justice, peace, and democracy..* London: Routledge.
- Soss, J. (1999) Lessons of Welfare: Policy Design, Political Learning, and Political Action. *The American Political Science Review*, 93(2), pp. 363-380.

- Streeck, W. & Thelen, K. A. (2005) Introduction: Institutional Change in Advanced Political Economies. In: W. Streeck & K. A. Thelen, eds. *Beyond Continuity: Institutional Change in Advanced Political Economies*. Oxford: Oxford University Press, pp. 1-39.
- Taylor, L. K. & Dukalskis, A. (2012) Old Truths and New Politics: Does Truth Commission "Publicness" Impact Democratization?. *Journal of Peace Research*, 49(5), pp. 671-684.
- Teitel, R. (2000) *Transitional Justice*. New York: Oxford University Press.
- Teitel, R. (2003) Transitional Justice Genealogy. *Harvard Human Rights Journal*, 16(spring), pp. 69-94.
- Thoms, O. N., Ron, J. & Paris, R. (2010) State-Level Effects of Transitional Justice: What Do We Know?. *International Journal of Transitional Justice*, 4(3), pp. 329-354.
- Thorarensen, B. (2016) The Constitutional Council: Objectives and shortcomings of an innovative process. In: V. Ingimundarson, P. Urfalino & I. Erlingsdottir, eds. *Iceland's Financial Crisis: The politics of blame, protest, and reconstruction*. New York: Routledge, pp. 239-251.
- Thorhallsson, B. (2013) The Icelandic Economic Collapse: How to Overcome Constraints Associated With Smallness?. *European Political Science*, 12(3), pp. 320-332.
- Tope, D., Pickett, J. T. & Chiricos, T. (2015) Anti-Minority Attitudes and Tea Party Movement Membership. *Social Science Research*, Volume 51, pp. 322-337.
- Van der Merwe, H., Baxter, V. & Chapman, A. R. (2009) *Assessing the impact of transitional justice : challenges for empirical research*. Washington, D.C: United States Institute of Peace Press.
- Venice Commission (2013) *Althingi*. Available at: [www.althingi.is/pdf/venice.coe.pdf](http://www.althingi.is/pdf/venice.coe.pdf) (accessed 14 January 2016).
- Vilhjeldsdóttir, S. & Kristinsson, G. H. (2018) Political Trust in Iceland: Performance or Politics. *Icelandic Review of Politics and Administration*, 14(1), pp. 211-233.
- Waldorf, L. (2012) Anticipating the Past: Transitional Justice and Socio-Economic Wrongs. *Social & Legal Studies*, 21(2), pp. 171-86.

Wiebelhaus-Brahm, E. (2010) *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*. London: Routledge.

Wodak, R., Khosravini, M. & Mral, B. (2013) *Right-wing Populism in Europe: Politics and Discourse*. London: Bloomsbury.

Wouters, N. (2014) The Use of History in the Field of Transitional Justice: A Critical Introduction. In: N. Wouters, ed. *Transitional Justice and Memory in Europe (1945-2013)*. Cambridge: Intersentia, pp. 1-24.

## APPENDIX A: LIST OF INTERVIEWS

	<b>Function</b>	<b>Anonymity granted</b>	<b>Recorded</b>	<b>Date of interview</b>	<b>Place of interview</b>
1	Kristrún Heimisdóttir, Political Advisor	No	Yes	26 May 2015	Reykjavik
2	SIC Researcher	Yes	Yes	30 November 2015	Reykjavik
3	Sturla Böðvarsson Former speaker of Parliament	No	Yes	1 December 2015	Reykjavik
4	Steingrímur J. Sigfusson, Leader, Left-Green Movement	No	Yes	2 December 2015	Reykjavik
5	Sigríður Friðjónsdóttir State Prosecutor	No	Yes	8 December 2015	Reykjavik
6	Ásmundur Helgason Director of Parliament's Legal Office	No	Yes	15 December 2015	Reykjavik
7	Birgir Ármannsson Chair of Parliament's General Committee	No	Yes	4 February 2016	Reykjavik
8	Eyvind Gunnarsson SIC Researcher	No	Yes	4 February 2016	Reykjavik
9	Senior member of the SIC	Yes	Yes	5 February 2016	Reykjavik
10	Vilhjálmur Árnason Chair of the Working Group on Ethics (WGE)	No	Yes	5 February 2016	Reykjavik
11	Símon Sigvaldason Reykjavik District Court Judge	No	Yes	3 December 2017	Reykjavik
12	Finnur Vilhjálmsson Prosecutor	No	Yes	6 December 2016	Reykjavik

13	Björn Þorvaldsson Senior Prosecutor	No	Yes	8 December 2017	Reykjavik
14	Senior SIC researcher	Yes	Yes	25 April 2017	Reykjavik
15	Björg Thorarensen Chair of Legal Department, University of Iceland	No	Yes	18 April 2017	Reykjavik
16	Árni Páll Árnason Former Leader of the Social Democratic Alliance	No	Yes	22 August 2017	Reykjavik



## APPENDIX B: LIST OF PRE-PUBLICATIONS

This cumulative dissertation consists of an envelope (the introduction and concluding discussion) and three stand-alone research articles (Chapters 2, 3 and 4). The first article is co-authored, and the second and third are single authored.

Chapter 1: has been published as: Kovras, I., McDaid, S. & Hjalmarsson, R. (2018) Truth Commissions after Economic Crises: Political Learning or Blame Game?. *Political Studies*, 66(1), pp. 173-191.

Chapter 2: *Transitional Justice after Economic Crisis: Innovation in Isolation, The Case of Iceland*. This chapter has not been published yet.

Chapter 3: *Truth commissions after economic crises: The impact of institutional learning*. This chapter has not been published yet.

## ABOUT THE AUTHOR:

*Ragnar Hjálmarsson is a Doctoral Candidate at the Hertie School in Berlin. Prior to joining Hertie, Ragnar worked for the International Monetary Fund, the peacebuilding organisation Conciliation Resources and, prior to that, for the Icelandic foreign service. He holds degrees from the London School of Economics and Political Science and from the University of Iceland.*

*This research was funded by the German Academic Exchange Service (DAAD).*