

# **Truth Commissions, Trials - or Nothing? Human Rights in Democratic Transitions**

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## **Abstract**

Gross human rights violations have constituted a hotly contested national issue in many recent transitions from authoritarianism to democracy. This article analyses how newly elected democratic governments have dealt with such violations committed by officials of previous authoritarian regimes. Empirical evidence from around twenty (mainly) Latin American and African countries undergoing democratic transition after the mid-1970s shows that the government's choice of human rights policy largely depends on the relative strength of the public's demand for truth and justice and the outgoing regime's demand for amnesty and impunity. Policy choice will tend towards trials as the outgoing regime becomes weaker and away from trials as the outgoing regime becomes stronger. Truth commissions are the most likely outcome when the relative strength of the conflicting demands is roughly equal.

*"...the least unsatisfactory course may well be:*

*Do not prosecute,*

*Do not punish,*

*Do not forgive,*

*And above all,*

*Do not forget"*

Samuel Huntington (1991: 231)

### **I. The dilemma: to punish or to pardon?**

In his guidelines for democratisers, Huntington aptly sums up the central dilemma that many political leaders have been confronted with in transitions from authoritarian to democratic rule. In situations where state officials of the previous regime have been responsible for murdering, imprisoning, torturing and "disappearing" its citizens, should the new government listen to public demand for disclosure of the truth and prosecution of the guilty? Or should it give in to the outgoing regime's demand for impunity for past crimes? By neglecting the former, the new democratic government may risk losing popular support and legitimacy, as well as risk failure to build respect for rule of the law and democratic institutions. By neglecting the latter, the government may run the risk of provoking a violent military reaction and hence putting the fragile democracy in potential danger. How, then, do political leaders respond to such conflicting demands?

Given a situation of past gross human rights violations, a democratic transition government's choice in the field of human rights are truth commissions (disclosing facts about human rights violations), trials (prosecuting and punishing the guilty), or nothing. This paper tests the following hypothesis:

*The government's choice of policy depends on the relative strength of demands from the public and the outgoing regime, the choice tending towards trials as the outgoing*

*regime becomes weaker and towards nothing as the outgoing regime becomes stronger, with truth commissions being the most likely outcome when the relative strength of the demands are roughly equal.*

This argument is in line with scholars on democratisation who argue that the type of regime transition has an impact on policy choice and hence also on democratic consolidation (Karl and Schmitter 1991; O'Donnell Schmitter and Whitehead 1986). Arguments such as “trials can only occur where there has been total regime collapse” (Mayorga 1997, Sutil 1997, Zalaquett 1995) or “truth commissions are compromise solutions” (Walsh 1996) are common. Yet, these and similar rather intuitive statements have, to my knowledge, not been rigorously tested. Huntington's (1991) comprehensive comparative study of how different countries have contended with the problem of gross human rights violations offers valuable insight about individual cases, but no scholar has systematically tested common explanations for choice of policy across cases. Similarly, the literature on interim official fact-finding bodies called truth commissions is also predominantly descriptive. Hayner (1994) and Bronkhorst (1995) have documented the existence and work of a large number of such truth commissions, but they offer no good analytical explanation for their occurrence. This paper seeks to fill these gaps. I investigate the existing universe of cases of truth commissions and trials after the onset of the third wave of democratisation starting in the mid-70s and offer arguments for when we may expect one or both or none of these solutions as a government response to past gross human rights violations.

## **II Conflicting demands and their solutions: a balance-of-power argument**

### *Conflicting demands*

Transition from authoritarian to democratic rule is characterised by a high degree of uncertainty, as the rules of the democratic “game” are not yet fixed (Przeworski 1991). Elites contend for power and influence over the democratic rules as well as for control over policy making during the transition process and after the regime change

(Hunter 1998; Karl and Schmitter 1991; O'Donnell 1992; Przeworski 1991). One particularly controversial policy issue in democratic transition has been how to deal with gross human rights violations committed by the outgoing authoritarian regime, be it a military or personal dictatorship, a one-party regime (i.e. communist regime), or a settler oligarchy. The intensity of the human rights issue depends on several factors, including the scope and nature of the abuses, as well as on who the targeted victims were, and on how well their interests are represented organisationally.<sup>1</sup> More important than the absolute numbers of victims (which is always a matter of contention as figures on human rights abuses are invariably either inflated or deflated, depending on the interests of those counting)<sup>2</sup>, is the type of response that the violations provoke. Human rights violations tend to mobilise different sectors of society that have strong conflicting interests, to which the democratic government must respond.

The government's answers to conflicting demands may have a significant impact on political stability, the process of democratisation, and, linked to the latter, national reconciliation. The preferences of the outgoing regime, the public, and the democratic government may be summed up as follows:

1. All outgoing regimes responsible for gross human rights abuses have one main interest in common: Avoid prosecution of its officers and officials at all costs and, if possible, avoid being given public blame for the violations.
2. The victims of human rights violations, their relatives and other people in support of their cause, by contrast, want retribution for the violations that have taken place under the outgoing regime. At a minimum, they want to find out what actually happened, i.e. establish the facts regarding the nature and extent of the violations. If possible, they would also like to have the perpetrators named, and as a third step have

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<sup>1</sup> It is a sad fact that the disappearance or murder of prominent left-wing politicians or foreigners have frequently solicited a great deal more national and international attention than have the massacres of hundreds of poor indigenous peasants in remote rural areas.

<sup>2</sup> See Brysk 1994 for a debate on how difficult it is to assert exact numbers for human rights violations.

the guilty put on trial and convicted. This may be summed up as a public demand for “truth” and “justice” respectively.<sup>3</sup>

3. The transitional democratic government’s primary is to stay in power; that means surviving the first electoral period through creating an environment of political stability. Secondly, the government must try to achieve the long-term goals of democratic consolidation through establishing respect for rule of the law (hence demonstrate the willingness to break with a dictatorial past), build legitimacy, and strengthen the faith in the new democratic institutions.<sup>4</sup> Achieving national reconciliation is also an important political objective. The way the government handles the human rights problem may directly influence its short-term goal and indirectly enhance or work against its long-term goals.

We may further assume that all three actors want to preserve democracy. Though democratically elected governments may be motivated to contest the armed forces over human rights abuses and to reduce their power and privilege, they are not willing to risk a coup to achieve these goals (Hunter 1998: 297). Similarly, the worst possible scenario for the public is the breakdown of democracy and a reversal to authoritarianism.

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<sup>3</sup> Note the potential conflict between the aims of truth, justice, and reconciliation. Establishing the “truth” may require offering amnesty to the violators in exchange for information, which precludes justice in the form of prosecution. Some scholars believe that reconciliation is best achieved through amnesty and truth commissions whereas justice is best achieved through reparations and prosecution. Yet, these relationships have been hotly contested. See Bronkhorst (1995), Kritz (1995), McAdams (1997), and Zalaquett (1995) for a debate on how and in which ways truth and justice may affect the prospects for reconciliation. Because there is a potential conflict between the two, it is inevitable that society may not always demand both. However, here I assume that the demand for justice is a politically more sensitive claim than the demand for truth because the political risk involved in prosecution of perpetrators (i.e. sanctions in form of a coup) is arguably higher than disclosing the facts about the violations.

<sup>4</sup> Democratic consolidation is a poorly defined term in the literature. The essence of consolidation has been linked both to democratic stability and democratic institutionalisation. Przeworski defines a democracy as consolidated when “a particular system of institutions becomes the only game in town” (Przeworski 1991: 26). O’Donnell’s more comprehensive definition includes procedural democracy (Robert Dahls’ term *polyarchy*), democratisation of central institutions, development of a democratic culture, democratisation of social relations and separation of the public and the private spheres (O’Donnell 1992: 48-49).

### *Policy options*

The democratic government has three policy choices in dealing with these conflicting demands.<sup>5</sup> It may simply do nothing (option 1). Secondly, it can establish a truth commission (option 2), whose prime mandate is to give a comprehensive account of certain past gross human rights violations, or violations of international humanitarian law, committed over a specific period of time. Such commissions usually exist temporarily for a predefined period of time and cease to exist when they have reported their findings. They are also usually vested with special authority by their sponsors (i.e. the President or other) which allows them access to information, security or protection to dig into sensitive issues.<sup>6</sup> In return for the exchange of information, truth commissions often offer a promise of partial or blanket amnesty.<sup>7</sup> Truth commissions have, with few exceptions, not had the judicial right to try the culprits. Thirdly, the government may instigate legal redress by prosecuting individual people and meting out punishment (option 3). By doing so, the government tries to achieve justice, restore faith in the legal institutions, promote the rule of the law, and prevent future abuses.

The democratic government's optimal choice would be to achieve both its short-term and long-term goals, but where there is a potential conflict between the two, it has to put priority to political survival first. The possibility of remaining in power depends on whether the democratic government sides with the outgoing regime or the public in the contest over options (1), (2) and (3) and what reactions this may provoke. When deciding whom to side with, the government must assess the *credibility* of the demands. The ability of either the public or the outgoing regime to pose sanctions on the government for not complying with its demands is linked to the relative strength and unity of each actor. To illustrate this intuitive point, a weak and disarrayed

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<sup>5</sup> See Walsh (1996) for a discussion of a wide range of policy options in the field of human rights, including reparation of various sorts.

<sup>6</sup> These four characteristics are taken from Patricia Hayner's (1994) classic definition of truth commissions.

<sup>7</sup> *Amnestia* (literally "to forget") was first declared in Sparta 404 BC. See Bronkhorst (1995: 37) for a discussion on moral questions and the amnesty issue.

outgoing military regime may be vehemently opposed to prosecution of its officers, but it may not be in a position to impose any sanctions on the new government for instigating trials. Similarly, if the outgoing regime is non-military and it no longer wields control over military forces, it cannot threaten the new government by resorting to force.

The government must also contend with what I here call “public opinion”. Public discontent does not pose an immediate direct threat to political stability the way that a coup does, but it may have serious effects on a government’s long-term goals of building legitimacy and electoral support for its policies. First, the general public may punish the government electorally if discontent with its policies. Second, the existence of special interests organisations, such as human rights groups, may be small in numbers but have a high leverage if they are able to draw unwanted international attention to the human rights cause. Since most new democratic governments are eager to send signals to the international community of complying with “good governance” procedures, a poor human rights record left unattended may harm its reputation. In addition to moral condemnation, the international community may also pose threats of boycott or economic sanctions, such as the withdrawal of loans or aid. The intensity of the demands from these different public interest groups is therefore important.

To sum up the policy preferences discussed above, the outgoing regime will always want nothing, grudgingly accept truth commission and will accept trials only if it is too weak to resist. The public, by contrast, will always want trials, will grudgingly accept truth commissions, but will accept nothing if it cannot avoid a military coup. The government is an autonomous actor who for self-preservation reasons is responsive to the demands from the military and the public. However, the government also has its own agenda which, depending on its bias, will make it choose either nothing or an active human rights policy in the cases where it can act autonomously. We expect the government to act autonomously only in the situations in which the



military is weak, since it always has to take the potential threat of a coup seriously. Based on these assumptions, we expect the following policy outcomes:

**Table 1: Expected policy outcomes**

<b>Public</b>	<b>Outgoing regime</b>		
		<b>Strong</b>	<b>Weak</b>
	<b>Strong</b>	Truth commissions	Trials
	<b>Weak</b>	Nothing	Nothing/unresolved

In the rest of the paper I present three arguments: First, government policy is made primarily in response to joint demands from the public and the outgoing regime. The most interesting situations occur where public demand for truth and justice is strong and the military's demand for impunity is strong. Assuming that both actors will back down on their claims in order to preserve democracy, we expect the government to present truth commissions as a compromise solution whereby both get a bit of what they want. If public demand is strong and the military is weak, we expect trials. Conversely, in the case of weak public demand and strong military demand, we expect nothing, since the military can impose sanctions in the form of a coup. In situations where the government does not have to respond to external demands (the weak-weak scenario), the government is free to implement whatever policy it wants. However, since implementing an active policy of any kind is always more costly to the government than following a nothing-policy option, we would expect the government to do nothing also in this case. The problem then would be to distinguish the "nothing" option in the weak-strong scenario from the "nothing" option in the weak-weak case.

My second argument is that the democratic government is more likely to err on the side of overestimating rather than underestimating the claims of the military relative to those of the public at the time of transition, since its own survival is at stake if it makes the wrong assessment. This could happen if the government challenges the

outgoing regime with prosecution where the military is both willing and powerful enough to retaliate with a coup.

Finally, I will argue that power dynamics, and hence the relative strength of the demands of the public and the outgoing regime, may change over time and open up for possible policy reversals. If we assume that the cost of staging a coup increases as democracy consolidates, we would expect to get the “nothing” option early in the transition process and “truth commissions” or “trials” later, granted that public demand remains constant or increases. I will test these three arguments in part IV, but first I address some possible objections that may be made to my line of reasoning.

### **III. Possible objections**

1. A natural objection could be made against treating the outgoing regime, the public and the incoming regime as “unitary actors”. In real life, of course, there will be internal splits, conflicting demands, and opposing policy preferences within each of these “unitary actors”. For instance, there may be tension between hard-liners and soft-liners within the military; tension between those who supported the old outgoing regime and those who are in favour of the new democratic government among the public; or tension between the executive, legislative and judicial branches of the government. Yet, the government (i.e. the executive) will have to make an assessment of the intensity and credibility of all these conflicting demands and the potential costs involved in not complying with them. So although policy preferences exist on a continuum, I argue that it is still analytically useful to distinguish between a strong and a weak military, a strong or a weak human rights movement, or an executive who supports or opposes a given human rights policy.
2. Some scholars may also object to the fact that I only focus on the balance of power between three actors and ignore other potential factors influencing political decision making in the human rights field at the time of transition, such as the international climate and the so-called snowball effect (Huntington 1991),

institutions (Pion-Berlin and Argeneaux 1998), or culture and religious values (Liebenberg 1998). The parsimonious approach I have chosen may be justified on the grounds that it goes a long way in explaining policy outcomes across countries and across time.

3. Country specialists may object to the fact that I in the following empirical analysis group together cases that may seem to be very different. For instance, the governmental truth commission established in South Africa is listed together with the non-governmental truth commission of Uruguay, though they had very divergent resources and mandates, and gained widely different status and acceptance in their respective societies. My main aim here is to account for why both countries sponsored or allowed for truth commissions, not to give an evaluation of whether they were effective or not. Evaluating the impact of truth commissions and trials and assess to what extent they have been successful in achieving the aims of truth, justice, and reconciliation is the topic for another paper.
4. Because this analysis tries to deal with a relatively large number of cases but does not employ any statistical analysis, it opens up for criticism from both macro-oriented scholars, on the one hand, and country specialists, on the other hand. The first group may have liked to see more rigorous regressions controlling for the influence of other variables. By contrast, country specialists at the other far end of the methodological spectrum would recognise the complexity of the details in each case, which are lacking here. Since the actual number of existing historical cases restricts my analysis, my aim is to systematise available cross-country information in an effort to support or contradict hereto-untested assumptions in the transition literature – a substantial improvement over existing studies. This is the topic for the next section.

#### IV A cross-country analysis of human rights policies

In the following I carry out a cross-country analysis aimed at testing the arguments developed in section II. I first give my criteria for case selection, then proceed to classify the demands of the public and the outgoing regime in each country as “strong” or “weak”. Finally, I present empirical evidence in support of my argument that the democratic government’s policy choice largely depends on the relative strength of these demands.

##### *Case selection*

In spite of about fifty countries or so having undergone democratic transition over the past three decades, only a third of these have actively dealt with the legacy of human rights violations (Bratton and van de Walle 1998; Hayner 1994; Huntington 1991).<sup>8</sup> Here I narrow the focus of the analysis to democratic transition after the mid-1970s, which places the following restrictions on my criteria for case selection: First, only truth commissions set up to investigate abuses carried out by *the previous authoritarian regime* are included (see Appendix 1 for details). Hence, committees set up by a government to investigate human rights abuses undertaken by or under *its own regime*, so-called investigatory bodies or committees, are excluded. This is an important distinction which both Hayner (1994) and Bronkhorst (1995) fail to make in their broad comparative studies of truth commissions. Second, I do not address trials in a context of transition instigated for other purposes than that of prosecuting people for gross human rights violations. Trials falling into the former category include the so-called *lustration* processes (also called “cleansing”, meaning purging from the public sector those who served in the repressive regimes) instigated in Eastern European countries after the demise of communism in the late 1980s, and, very recently, in South Korea.<sup>9</sup> It further includes the trials of those plotting to overthrow

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<sup>8</sup> It may, of course, be argued that the remaining two thirds of the countries did not have severe enough human rights abuses to warrant truth commissions or trials. We do indeed expect the likelihood of punishment to increase with the severity of human rights abuses. This argument could be tested if reliable data on human rights violations could be found for all countries going through democratic transition in the period we are interested in. However, that is beyond the scope of this paper.

<sup>9</sup> See Bronkhorst (1995: 77); Kritz (1995, Vol 2) and Mc Adams (1997) for good accounts of the lustration processes in Czechoslovakia, Poland, Hungary and Bulgaria.

Gorbachev in 1994. The policy choices of transitional governments fitting my working definition are depicted in Table 2 below. Note that most countries pursuing an active human rights policy have been either Latin American or African – reasons for which I will not discuss in this paper. Both national governments and non-governmental organisations have instigated truth commissions or trials.

**Table 2: Truth commissions, trials, both, or nothing**

SPONSOR	TRUTH COMMISSIONS	TRIALS	BOTH	NONE
<b>NATIONAL GOVERNMENT</b>	The Philipp. (1986) Uganda (1986) Chad (1990) Chile (1990) Haiti (1995) South Africa (1995)	Greece (1975-76) Rwanda (1994-) Malawi (1995)	Bolivia (1982)/(1986-93) Argentina (1983)/(1985) East Germany (1992-)/(1992-) Ethiopia (1992)/(1997-)	South Korea* Colombia* Indonesia* Namibia* Angola** Mozambique**  Eastern European countries**
<b>NON-GOVT. OR INTERNATIONAL</b>	Brazil (1985) Uruguay (1985) El Salvador (1991) Guatemala (1996)	Yugoslav. (1994-)	Rwanda (1993)/(1994-)	Cambodia*

*Sources:* Bronkhorst 1995; Hayner (1994); Kaye (1997); Kritz (1995); McAdams (1997).

*Notes:* The year refers to when the truth commission was established or when the trials were held. A dash means that the process is ongoing. Rwanda appears twice in the table because trials have been instigated both by the national government and the international war crimes tribunal set up by the UN. The first convictions in both Rwandan tribunals took place in 1998. Many more are expected.

\* There have been calls for truth commissions in South Korea and Honduras (Hayner 1994: 605); Rwanda (Frøyland et.al. 1998: 302); Namibia (Liebenberg 1996; Kritz 1995, Vol. II: xi); Indonesia (*The Economist*, June 6<sup>th</sup>-12<sup>th</sup>, 1998) and Cambodia (*New York Times*, Jan. 13<sup>th</sup>, 1999). The governments of these countries have either not yet officially responded or have responded negatively.

\*\* No formal claims for truth commissions or trials have been made by the public in these countries.

### *Defining and classifying the actors and their choices*

To what extent can the policy choices outlined in the above table be accounted for as a government response to the relative credibility of conflicting demands from the public and the outgoing regime? And how are these conflicting demands registered and measured? Early transition theory, based primarily on the Latin American experiences, argues that the slower and more controlled the transition, the stronger the bargaining power of the outgoing regime vis-à-vis the incoming regime (Karl and Schmitter 1991; O'Donnell 1992). The recent transitional experiences of Eastern Europe and Africa have led scholars to focus more on the distinction between a “top-down” versus a “bottom-up” approach (Bratton and van de Walle 1998; Huntington 1991). The central point is to what extent the outgoing regime is in control of the transition process and hence can dictate terms to prevent prosecution for human rights violations.

Based on the arguments of this transitional literature, I have used information about what type of transition the countries in Table 2 have undergone as a basis for classifying the outgoing regime as “strong”, “weak” or “defeated”. I have grouped transitions that have been gradual, controlled, and authoritarian-initiated, or transitions where there has been a relatively fair power balance between the incoming and the outgoing regime, as *pacted*.<sup>10</sup> For these types of transitions, I have classified the outgoing regime as “strong” (S). This means that the outgoing regime is expected to be coherent, relatively unified, and thus have a substantial say in the proceedings of the transition process. I have also classified the outgoing regime as “strong” in cases

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<sup>10</sup> Karl and Schmitter define “pacts” as “negotiated compromises in which contending forces agree to forego their capacity to harm each other by extending guarantees not to threaten each others interests” (Karl and Schmitter 1991: 281). I here use “pact” in a slightly broader sense, which incorporates Huntington’s partly overlapping terms of transformation and transplacement (Huntington 1991: 121-151). Since terminology varies widely, I have used the different four-mode categories employed by Karl and Schmitter (1991), Huntington (1991) and Bratton and van de Walle (1998) respectively to create two broad categories: pact and collapse. I have added peace agreement as a third category to account for transitions brokered by an external power. The corresponding classifications are:

<i>Mine</i>	<i>Karl &amp; Schmitter (1991)</i>	<i>Huntington (1991)</i>	<i>Bratton &amp; van de Walle (1998)</i>
Pacted	= pact	= transformation/transplacement	= pact
Collapse	= impostition	= replacement	= rapid elections
Peace agreement	= -----	= intervention	= -----

where an international broker has negotiated a *peace settlement* after a prolonged civil war, if the outgoing regime has been party to the bargaining process. Conversely, I have defined the outgoing regime as "weak" (W) if it is reported in the literature to have lost much of its legitimacy, but still remained party to the bargaining process. Thirdly, if the outgoing regime has been defeated in war (in the case of military regimes), or forced to flee the country (in the case of civilian dictatorships), or has totally collapsed for other reasons, I have classified it as "defeated" (D). These transitions are collectively grouped as transitions by *collapse*. Note that a defeated military poses no initial threat to the new democratic government, whereas a weak military may regain strength over time.

The relative strength or weakness of "public demand" for truth and justice is trickier to assess, as it is not necessarily linked to the type of transition. Moreover, the public encompasses a wide array of individual actors that are quite likely to have internally conflicting interests. The part of the population supporting the outgoing regime most probably prefers no action to be taken in the field of human rights. Special interest groups, such as non-governmental human rights organisations or other civil society organisations pushing for either a truth commission or legal redress, or both, often represent the interests of the victims. The relative strength of these conflicting demands forms a continuum and is obviously hard to quantify. Based on the reading of various secondary sources and other scholars' assessments of each of the countries in Table 2, I have classified "public demand" as "strong" (S) if the literature reports it as having placed substantial pressure on the government to initiate human rights policies. This is most typically recorded with reference to the activities of human rights organisations (often with reported links to the international community, or to domestic institutions such as the Catholic Church or political parties), but also to rallies, newspaper writings, demonstrations, and public opinion polls (reflecting the preferences of the voters). Conversely, public demand is recorded as "weak" (W) if no apparent credible pressure for truth and justice has been placed on the government. This may be because (a) the public simply does not want such policies to be enacted,

or (b) the public wants such policies but fails to put pressure on the government out of fear for retribution, or (c) the public is too disorganised to make their demands effective. The (largely subjective) assessment of this kind of information is compounded in the table below. The cases are sorted according to (1) the type of policy adopted by the country (trials (T), truth commissions and trials (T + TC), truth commissions (T), and nothing (N) respectively); (2) the type of transition, (3) the year of regime change, and (4) the name of the country if more than one entry per year.

**Table 3: Policy options in a transitional setting: looking for systematic patterns**

Country	Year	Type Transition	Outgoing regime		Public demand		Sponsor		Policy			Fit model	
			S	WD	S	W	Na	Int	T	TC	N	Yes	No
Greece	1974	Collapse (rp)		D	X		X		X			X	
Malawi	1994	Collapse (RE)		D	X		X		X			X	
Yugoslav	1994	Collapse		D	X			X	X			X	
Bolivia	1982	Collapse (tp)		W	X		X		X	NR		X	
Argentina	1983	Collapse (rp)		D	X		X		X	X		X	
E. Germ	1990	Collapse (rp)		W	X		X		X	X		X	
Ethiopia	1991	Collapse (NC)		D	X		X		X	X		X	
Rwanda	1994	Collapse (RE)		D	X		X	X	X	X		X	
Philipp.	1986	Collapse (rp)		W	X		X			NR			X
Uganda	1986	Collapse (NC)		D	X		X			X			X
Chad	1990	Collapse (NC)		D	X		X			X			X
Uruguay	1984	Pacted (tp)	X		X		X			X		X	
Brazil	1985	Pacted (tf)	X		X		X			X		X	
Chile	1990	Pacted (tf)	X		X		X			X		X	
S. Africa	1994	Pacted (tp)	X		X		X			X		X	
El Salv	1992	Peace agr (tp)	X		X			X		X		X	
Guatemala	1994	Peace agr (tf)	X		X			X		X		X	
Haiti	1994	Peace agr	X		X			X		NR		X	
Namibia	1990	Peace agr (PA)	X		X			X			X		X
Cambodia	1991	Peace agr	X		X			X			X		X
Angola	1992	Peace agr (PA)	X			X		X			X	X	
Mozamb	1992	Peace agr (PA)	X			X		X			X	X	



Country	Year	Type Transition	Outgoing regime		Public demand		Sponsor		Policy			Fit model	
			S	WD	S	W	Na	Int	T	TC	N	Yes	No
S. Korea	1992	Pacted (tp)	X		X		X				X		X
Indonesia	1998	Pacted	X		X		X				X		X
Bulgaria	1989	Pacted (tf)	X			X	X				X		X
Czechosl	1989	Pacted (tp)	X			X	X				X		X
Poland	1989	Pacted (tp)	X			X	X				X		X
Hungary	1990	Pacted (tf)	X			X	X				X		X
Romania	1989	Collapse (rp)		W		X	X				X		X

*Sources:* Alden and Simpson (1993); Bratton and Van de Walle (1998); Bronkhorst (1995); Ekern (1998); Evans (1993); Gairdner (1998) Hayner (1994); Huntington (1991); Karl and Schmitter (1991); Kaye (1997); LeMarchand (1994); McAdams (1997); Miles (1993); Stotzky (1997); Sung-Joo (1988); Tronvoll (1998); Zalaquett (1995).

*Notes:* The dates refer to the time of regime change.

S = strong, W = weak, D = defeated, Na = national, Int = international

T = trials, TC = truth commission, N = nothing

I have broadly classified the types of transition into collapse, pacted, and peace agreements, depending on (i) the extent of negotiation that took place and (ii) on whether international actors brokered the peace or not. Where available, Huntington's (1991) classifications (transformation (tf), transplacement (tp), and replacement (rp)) are noted in parentheses. For the African cases, Bratton and van de Walle's (1998) classifications (rapid election (RE), national congress (NC) and pact (PA)) are noted in parentheses, where available.

### *Linking strength to strategy*

I have used the information of the relative - credible - strength of public demand and that of the outgoing regime reported in Table 3 above to determine to what extent actual policy choices concur with predictions made in Table 1 earlier in this paper. Based on the relative strength of public versus military demand alone, the table below shows that our model correctly predicts policy outcomes for a large number, though

far from all, countries that have chosen truth commissions, trials, or nothing in an attempt to deal with the legacy of gross human rights violations. Deviant cases are noted in *italics*.

**Table 4: Actual policy outcomes**

	<b>Military demand</b>		
		<b>Strong</b>	<b>Weak</b>
	<b>Strong</b>	<b>Truth commissions</b> Uruguay (TC) Brazil (TC) Chile (TC) South Africa (TC) El Salvador (TC) Guatemala (TC) Haiti (TC)  <b>Deviant cases</b> <i>Namibia (N)</i> <i>Cambodia (N)</i> <i>South Korea (N)</i> <i>Indonesia (N)</i>	<b>Trials</b> Greece (T) Yugoslavia (T) Malawi (T) Bolivia (T+TC) Argentina (T+TC) East Germany (T+TC) Ethiopia (T+TC) Rwanda (T+TC)  <b>Deviant cases</b> <i>The Philippines (TC)</i> <i>Uganda (TC)</i> <i>Chad (TC)</i>
<b>Public demand</b>	<b>Weak</b>	<b>Nothing</b> Angola (N) Mozambique (N)  Bulgaria (N) Czechoslovakia (N) Poland (N) Hungary (N)	<b>Nothing</b> Romania (N)

*Source:* Information synthesised from Table 3

*Notes:* T = trials, TC = truth commissions, N = nothing.

### *Evidence confirming predictions*

In line with our predictions, Uruguay, Brazil, Chile, South Africa, El Salvador, Guatemala and Haiti chose truth commissions as a compromise solution. The first five countries had elite-initiated transitions where the outgoing regimes were in a position to dictate the terms of their departure by insisting on amnesty laws (see Appendix 1 for details). The transitions in El Salvador and Guatemala were facilitated by UN peace agreements after prolonged civil war. As part of the peace accords, the new democratic governments agreed to set up truth commissions, accompanied by amnesty laws, in response to vocal demand from both human rights groups and the public writ large (Gairdner 1998; Kaye 1997). The transition in Haiti was in part a result of a negotiated peace settlement combined with US military intervention where the Haitian outgoing regimes' demand for impunity was secured through an amnesty law (Stotzky 1997).

Correct predictions were also made for the following countries having trials, either separately (Greece, Yugoslavia, Malawi) or in combination with truth commissions (Bolivia, Argentina, East Germany, Ethiopia, and Rwanda). As the information in Table 3 shows, all these countries had outgoing regimes that were either defeated in internal or external war (Yugoslavia, Argentina, Ethiopia, and Rwanda) or that were severely discredited for other reasons (Greece, Malawi, Bolivia, and East Germany). This supports conventional wisdom that trials are only likely to be held in cases of transition by collapse.

Finally, the model also correctly predicted nothing-policy options in Angola and Mozambique, on the one hand, and the Eastern European countries (except East Germany), on the other hand. Angola and Mozambique illustrate the special nature of internationally brokered peace settlements after prolonged civil war. The outgoing regimes in both countries maintained a high degree of control in the negotiation process and, importantly, control over the military forces. The public has been too exhausted after years of civil war (newly erupted again in Angola) to place any

credible demands for truth and justice on the current governments (Alden and Simpson 1993). The United Nations has not insisted on truth commissions or trials, fearing that this would upset the fragile political balance. This contrasts with the previously mentioned UN negotiated settlements in El Salvador and Guatemala.

The Eastern European countries, (again with the exception of East Germany), present a different and interesting group of cases. They had relatively strong outgoing regimes, as a result of controlled transitions from communism, combined with weak public demand – save Romania, where the Chauchescos were forced from power and summarily executed after ad-hoc trials. The intriguing question here is why these countries with histories tainted by massive and systematic human rights violations have not have a substantial public demand for truth and justice. Several scholars have convincingly argued that this may be because a sizeable proportion of citizens in these countries have been directly or indirectly associated with the outgoing communist regimes and therefore have had their own interests to protect. The issue of collaboration may thus offer at least a partial explanation for why justice in Eastern Europe has been sought through the process of lustration rather than through prosecution for human rights violations (Kritz 1995).

#### *Deviant cases*

Although there is clearly a strong link between the relative strength of conflicting demands and policy outcomes, there are several cases that don't fit our model. Two groups of countries have done *less* in the field of human rights than our model predicts: those that did nothing where truth commissions were expected (Namibia, Cambodia, South Korea, and Indonesia) and those that only established truth commissions where trials were expected (the Philippines, Uganda, and Chad). What may account for this? As always, the devil is in the details. By taking a closer look at these transitions, three broad alternative explanations present themselves. The first is simply the lack of executive commitment to the process of human rights. In Uganda, Namibia and Korea, the democratic governments have continued to court strong ties

to the outgoing regime or the military after the transition. After ousting his military predecessor, President Museveni of Uganda established a truth commission, reportedly primarily in response to international pressure to address the human rights situation in the country. The commission released its report only eight years later, in spite of heavy public demand. Trials were never on his political agenda (Hayner 1994). President Nujoma of Namibia is known to have strong affiliations with SWAPO, who has been accused of many of the atrocities committed during the civil war with the South African army. This may explain Nujoma's reluctance to respond favourably to public demand for truth and justice (Africa Watch 1992; Cliffe 1994). The election of civilian president Kim Young Sam in 1992 marked an important democratic turning point in Korean politics, but there was no apparent initiative on part of the new democratic government to investigate human rights abuses or instigate trials. Finally, the stepping down of long-term dictator Suharto in Indonesia after sustained public pressure in 1998 marks an important democratic opening in Indonesian politics. Yet, his appointed successor, President Habibie, has a strong interest in preserving his links to the military. In sum, the executives in these four countries have had a personal interest in favouring the military's demand for impunity over the public's demand for truth and justice.

A second potential explanation for the apparent lack of government initiative in the human rights field is the continued threat of military opposition to the democratic government after the transition. For instance, in Cambodia, the Khmer Rouge (allegedly responsible for killing more than two million Cambodians between 1975-78) was included in the peace negotiations brokered by the UN in 1992, and managed to secure their impunity (Brown 1993). The survival of the Khmer Rouge leadership till last year has presented a dormant, though constant, threat to the new government. The situation in the Philippines was different, though somewhat similar, The Aquino government taking over after the collapse of the Marcos regime in 1986 was initially openly in favour of dealing with the legacy of gross human rights violations. The government appointed a truth commission, but it abandoned its work halfway through

and never issued a report (Hayner 1994). The Aquino government faced severe opposition and three successive tentative military coups right coming to power and judged it as politically unfeasible to push any further for truth or trials (Villegas 1987). These two examples support our argument that where the military retains a strong presence in politics, the democratic government must tread carefully.

A third and final explanation for why some democratic government have done less than expected to resolve the legacy of past human rights violations is simply political chaos. Chad after the overthrow of Habre's regime in 1990 is a good example. The democratic government set up a truth commission to investigate abuses carried out under the three decades of Habre's despotic rulership and the president formally pledged to respect democracy and human rights. However, human rights violations have continued on a large scale after the return to electoral democracy. Given the lack of presidential control over the army, combined with a poor judiciary and the absence of the rule of the law, internal factions and ethnic conflict, it is hardly surprising that trials have not been held in Chad (Miles 1995).

To sum up, there are a number of cases where the government did *less* than expected in a given balance-of-power context, for reasons such as strong executive ties to the outgoing regime, a continued looming military presence, or simply political chaos. One interesting thing to note is that no country did *more* in the field of human rights than predicted. There are, in fact, no empirical examples of a democratic government establishing a truth commission or instigating trials if public demand for truth and justice is weak, even where the outgoing regime has been defeated. This supports our assumption that a democratic government is more likely to err on the side of doing too little rather than too much with respect to the complicated issue of past human rights violations. No government has so far been willing to take action on this issue unless it has been pressured by public demand.

*May human rights policies change over time?*

So far I have dealt with the policy options chosen by democratic governments at the time of regime transition, assuming that the power balance is static. In the following I argue that negotiation or bargaining between the government and the outgoing regime, on the one hand, and between the government and the public, on the other hand, may usefully be thought of as taking place in three distinct phases of the democratisation process: the liberalisation/democratisation phase (t-1), the time of regime change (t+1), and the democratic consolidation phase (t+2). We may expect policy reversals where the relative balance of conflicting demands from the public and the outgoing regime change over time. Table 5 below shows when the main bargaining over human rights policies took place in each country. Countries that either have had, or are expected to have, policy reversals in the field of human rights are indicated in bold types.

**Table 5: Bargaining over human rights in transitions to democracy**

t-1		t+1		T+2	
Country	Policy	Country	Policy	Country	Policy
Uruguay 1985	TC	Greece 1975	T		
Brazil 1985	TC	Yugoslavia 1992	T		
<b>Chile 1990</b>	<b>TC</b>	Malawi 1995	T	<b>Chile 1995/1999</b>	<b>T/T?</b>
El Salvador 1992	TC	<b>Bolivia 1982</b>	<b>T + TC</b>	<b>Bolivia 1989/1999</b>	<b>T/T?</b>
Haiti 1995	TC	<b>Argentina 1983</b>	<b>T + TC</b>	<b>Argent. 1989/1999</b>	<b>No T/T?</b>
<b>S. Africa 1995</b>	<b>TC</b>	Ethiopia 92/97	T + TC	<b>S. Africa 1998/1999</b>	<b>T/T?</b>
Guatemala 1996	TC	East Germ 92/98	T + TC		
		Rwanda 94/98	T + TC		
		Phillipp 1986	TC		
		Uganda 1986	TC		
		Chad 1990	TC		
		Namibia 1990	N		
		<b>Cambodia 1991</b>	<b>N</b>	<b>Cambodia 1999</b>	<b>TC/T?</b>
		Angola 1992	N		

		Mozamb. 1992	N		
		S. Korea 1992	N		
		Indonesia 1998	N	<b>Indonesia 1999</b>	<b>TC/T?</b>
		Bulgaria 1989	N		
		Czechosl. 1989	N		
		Poland 1989	N		
		Hungary 1989	N		
		Romania 1989	N		

*Sources:* Information synthesised from other tables in this paper.

*Notes:* The dates refer to when a truth commission was established or trials held. For the countries with no policy, the dates refer to when regime change came about.

Three patterns are worth noting: Firstly, no trials were initially held in countries where the transition process included heavy elements of negotiation and bargaining in the period before the actual regime change (t-1) (defined as gradual or *pacted* transitions). This is in accordance with our prediction that trials are held only in situations of a collapsed or weak outgoing regime. Truth commissions, by contrast, appear most frequently as sole solutions precisely in the cases where there is a heavy element of pre-regime transition bargaining. Hence, they are appropriately considered a “compromise solution”. Secondly, where the main bargaining takes place at the time of regime change (t+1), the range of policy solutions is much wider. Thirdly, we note that at least three countries (Chile, Bolivia, and Argentina) have had policy reversals in the field of human rights in the consolidation phase.

Argentina is the only case where the government initiated a human rights policy they were forced to back down on. Alfonsín’s famous trials and conviction of seven Argentinean generals in 1985 was reversed when Menem came to power in 1990 and issued sweeping pardons – after three unsuccessful military revolts. Hence, the military junta, initially emerging weak and discredited after their defeat in the Falklands War, was able to close ranks, regain strength and impose a real threat to the



government, which eventually lead to a reversal in policy in favour of the military. For Chile and Bolivia, the situation has been exactly the opposite. Chile's ex-dictator Augusto Pinochet initially succeeded in getting guarantees for upholding his 1978 Amnesty Law during negotiations with the incoming Aylwin government in 1989. However, after years of public pressure on the democratic government, the amnesty law was put to shame with the trials of retired general Manuel Contreras and former chief of the secret police and second in command, General Pedro Espinoza in 1995. A public opinion survey taken July the same year showed that 65.8% of Chileans polled agreed that the generals should serve time (Hunter 1998: 312). More cases are currently under investigation in Chile. This indicates that the power balance has shifted in favour of the public and that the military no longer sees the protection of its interests dear enough to threaten the government. Bolivia has had a similar situation. The initial amnesty law passed on transition which protected the outgoing military regime from prosecution was set aside when the new democratic government instigated a series of trials in 1985 – the most wide-reaching process of legal justice in any Latin American country.

Recent development indicates further changes in the favour of increased justice in these three countries. The arrest of Pinochet in London in October 1998, on the pretext of charging him with murder and genocide while heading the military junta prior to 1989, is an ironic twist of history. If Pinochet is asked to stand trial, it will be the first time in history that a former dictator has been arrested outside his country to account for past misdeeds. This will set a new precedent in international human rights law. Partly encouraged by this event, there has been a recent push for opening trials against former generals for the abduction and kidnapping of babies during the “dirty war” in Argentina. This new initiative on part of the Argentinean courts – reportedly in response to sustained public pressure - indicates yet another shift in the human rights policy. Similarly, in Bolivia, there have been threats of opening up for trials against former army general and dictator and present head of state President Hugo Banzer (*The Economist*, Feb. 27<sup>th</sup>-March 5<sup>th</sup>, 1999, p. 34). Finally, the amnesty

law in South Africa, which is based on individual rather than blanket amnesty, will not cover all cases of human rights violations. Several trials have already been held, and many more are expected to take place in the near future.

Other democratic governments that hereto have been reluctant to embarking on a quest for truth and justice are currently in the process of considering possible action in the field of human rights. Recent intense public demand for truth and justice in Indonesia – particularly demonstrated through student demonstrations - suggests that the upcoming elections in June 1999 might open up the possibility of a truth commission or trials or both. In Cambodia, a UN report released in February 1999, recommends remaining Khmer Rouge leaders to be prosecuted by an international war crimes tribunal similar to those of Rwanda and the former Yugoslavia. According to two separate polls, between 75-80 per cent of Cambodians favour an international tribunal (*The New York Times*, March 2<sup>nd</sup>, 1999: A1, A8). The death of Khmer Rouge's prime and feared leader, Pol Pot, in 1998 has encouraged the present democratic government to deal with the past, many years into the process of democratic consolidation.

All this shows that the power dynamics set at the time of transition are not permanently fixed. Sustained or increased demand for truth and justice from either the public and/or a relatively small number of human rights organisations and lawyers groups, may successfully draw unwanted international attention and threats of sanctions which may encourage or pressure an initially unwilling government to become more pro-human rights.

## **V Conclusions and suggestions for future research**

In this paper I have presented three arguments to account for the policy choices made by democratic governments in an effort to deal with the legacy of gross human rights violations after the transition to democracy. First I have argued that the government's choice of policy depends on the relative strength of credible demand for truth and

justice from the public and the demand for amnesty and impunity from the outgoing regime. Second, I have argued that because the newly elected democratic government is primarily concerned with political survival, it is prudent in its policy choices and will do less rather than more to resolve the problem of human rights violations. A worse case scenario for both the democratic government and the public would be democratic breakdown in form of a coup. Hence, both may be willing to back down on their demands in order to preserve democracy. Third, I have argued that as the democracy solidifies over time, the democratic government may gradually be willing to implement stronger measures in the human rights field. This, however, is only expected if public demand for truth and justice remains constant or increases and the military is perceived as sufficiently weak or unwilling to impose sanctions on the government.

An empirical analysis of about twenty – mainly Latin American and African – countries undergoing democratic transition after the mid-1970s, lends substantial support to all three arguments. For those governments that chose truth commissions or trials in response to the conflicting demands from the public and the outgoing regime, the choice tended towards trials as the military was weaker and towards nothing as the military was stronger – in line with both our model and conventional wisdom. Truth commissions emerged as a compromise solution when claims from both the public and the military were strong and credible. The democratic government in this situation does not expect the military to take on the costs of staging a coup, especially since amnesty laws that exempt the military from prosecution usually accompany truth commissions. Since the government wants to please the electorate and give a favourable impression to the international community, it establishes a truth commission as a first step in the quest for truth and justice.

The cases which deviate from our model demonstrate that a democratic government frequently tends to accomplish less in the field of human rights than the balance-of-power argument would suggest. Interestingly, there is no empirical evidence of a

government having implemented stronger measures to resolve the human rights question than our model predicts. This, in fact, supports my second assumption regarding prudence on the government's side. Alternative explanations briefly suggested here are the lack of executive will to implement human rights policies (often because of strong links to the outgoing regime or the military), continued threat from the military or the leadership of the outgoing regime, or simply political chaos.

After analysing policy choices made at the time of transition, I have also presented empirical evidence showing that government policy making in the human rights field is not static. Negotiation and bargaining may continue into the consolidation phase and lead to policy reversals. As the development of several countries indicates, the human rights issue may gain new salience with domestic changes in power balances. With the sole exception of Argentina, policy reversals have been in favour of the public.

In sum, the parsimonious approach employed in this paper has been useful in explaining variation in human rights policies across countries and across time. There is a relatively strong pattern in the connections between transitional power and the choice of either truth commissions, trials or nothing. However, due to the relatively small number of cases we should be cautious when interpreting these results.

There are three ways of expanding or improving this analysis: either by adding more cases, or by refining the existing balance-of-power approach, or by searching for alternative explanations. In the first case, we need to wait for history to unfold to see if new governments undergoing transitions from authoritarianism to democracy will choose policies that fall into line with the pattern displayed in this analysis. Likely test cases to occur in the near future are South Africa (where trials have already started), Indonesia (where elections are promised for June 1999), Nigeria (where democratic elections were held in February 1999 for the first time in 16 years), and Cambodia (where the UN is pressing for trials and domestic demand for justice is becoming

more vocal). Later, perhaps, war-torn countries such as Somalia and Sierra Leone, should they one day come to peace, may be added to the list of democratising countries. Second, using a more integrated approach in the form of a formal nested games model could refine the balance-of-power argument. A nested games model might allow us to reflect the preferences of the executive where these deviate from what the balance-of-power argument predicts. Also, such an approach may allow us to include other actors that potentially may have a fair say in policy making in the human rights field, such as the judiciary.<sup>11</sup>

So far, we have focused exclusively on the actors in the policy making process. Given that policy making always takes place within an institutional context, it might also be useful to analyse to what degree institutional factors influence policy outcomes. More specifically, we could test the power and autonomy of the executive relative to that of the legislature and the judiciary and link our findings to variation in policy outcomes.<sup>12</sup>

If these arguments were formalised and tested in a large-n analysis setting, they might shed new light on important aspects of policy making in the field of human rights and thus make us better understand when and why democratic governments frequently opt for a strategy of forgive and forget rather than seek justice through prosecution and punishment of human rights violators.

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<sup>11</sup> Based on the experiences of Chile and Argentina, Wendy Hunter (1998) has suggested such a complex nested games approach, formalising a three-way bargaining between the democratic government, the military and civil society. She also mentions the judiciary as a potential veto player in the bargaining over human rights policy. See Tsebelis (1990) for the theory of nested games.

<sup>12</sup> Pion-Berlin and Argeneaux argue that success or failure to military suppression of human rights initiatives at the time of transition can not be explained fully by the transitional balance of power. Using empirical evidence from Chile and Argentina they argue that policy outcomes are inextricably tied to levels of institution concentration and autonomy in the executive branch (Pion-Berlin and Argeneaux (1998: 633).

# Appendix 1

**Table 1: Truth commissions 1982-1998**

<b>Truth commission Initiated</b>	<b>Truth Comm. Initiator</b>	<b>Time Covered by com- mission</b>	<b>Report Released</b>	<b># of victims presented to TC</b>	<b># of victims investiga- ted in depth</b>	<b>Reform And/or Repara- Tions</b>	<b>Amnesty</b>
South Africa* (94)	President	1960-93	1998	?	?	X	X ****
Guatemala** (96)	UN	1960-96	1998	55,021 d	100	X	X
Ethiopia (93)	President	1974-91	1997	5198	209 g	-	-
Haiti (95)	President	1991-94	NR	-	-	-	X
El Salvador (92)	UN	1980-91	1993	22,000dm	32	X	X
Rwanda (93)	4 NGOs	1990-93	1993	2,000 m	20	-	-
E. Germany (92)	Parliament	1949-89	1994	?	?	X	-
Chad (91)	President	1982-90	1992	3,800	0	-	X
Chile (90)	President	1973-90	1991	3,428 dmt	2,920	X	X
Philippines (86)	President	1972-86	NR	-	-	-	-
Uganda (86)	President	1962-86	1994	?	?	-	-
Uruguay (85)***	SERPAJ	1973-82	1985	164 d	0	-	X
Argentina (83)	President	1976-93	1985	8,960 dm	0	X	X
Brazil (85)	NGO/church	1964-79	1985	?	?	-	X
Bolivia (82)	President	1967-82	NR	155 d	0	-	-

*Sources:* This table is largely based on Hayner's (1994) descriptive comprehensive cross-regional study covering fifteen truth commissions in the period 1974-1994. I have excluded four of the commissions listed by Hayner because they were not created to investigate abuses of the past authoritarian regime. These are the committee set down by Amin in Uganda (1977) to investigate into abuses carried out by his own military; the two ANC commissions set down in South Africa (1992 and 1993) to look into human rights violations carried out by its own members, and the commission set down by Mugabe in Zimbabwe (1993) to investigate the Matabele killings. I have also excluded the commission formed by the Office of the Special Prosecutor in Honduras in 1993 under a civilian government to investigate abuses carried out under another *civilian* government (in power from 1980-93), as this does not comply with the criteria of regime transition. Trials in Honduras started in 1995

against some of the top military personnel and are still ongoing. See Bronkhorst (1995) and Kaye (1997) for details. I have, though, defined the Brazilian commission sponsored by the Catholic Church and the World Council of Churches as a truth commission because it has much in common with the commission set up by SERPAJ in Uruguay. Also, I have included the recent truth commissions in South Africa and Guatemala. For specific country information, see Liebenberg (1996) on South Africa; Gairdner (1998) on El Salvador, Guatemala and South Africa; Tronvoll (1998) on Ethiopia; Enslaco (1994) on Chile and El Salvador; Brysk (1994) on Argentina; Kaye (1997) on El Salvador and Honduras; Stotzky (1997) on Haiti; and Villegas (1987) on the Philippines.

*Notes:* NR = report not completed or released; d = disappeared; m = murdered; t = tortured, g = genocide.

\* In effect, the South African commission was not issued by presidential decree, but was rather “the implied result of a multiparty negotiated constitution and went through an extended process of parliamentary hearings and a similar process of public debate and scrutiny” (cited in Liebenberg 1996: 147). However, since the commission was strongly backed by President Mandela, I have classified it as a presidential commission. The findings of the commission’s five-volume report are too complex to be summed up here, but include documentation on over 10,000 killings, extensive torture, and rape.

\*\* In Guatemala the president appointed the commission with heavy support from the UN. For practical purposes, Guatemala can be said to have a UN sponsored commission.

\*\*\*A parliamentary commission of inquiry was set down in Uruguay to investigate 164 cases of death and disappearances, but the report was published by a private NGO, SERPAJ. The published *Nunca Más* report shares many characteristics with the reports published by similar commissions in Chile, Argentina and Brazil.

\*\*\*\* The South African National Unity and Reconciliation Bill, passed by Parliament in 1995, stated that “amnesty shall be granted in respect to acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past”. The Truth Commission received 7,128 applications for amnesty before its closure date.

## Selected Bibliography

- Alden, Chris and Mark Simpson. 1993. "Mozambique: A Delicate Peace", *The Journal of Modern African Studies*, Vol. 31, No. 1, pp. 109-130. Cambridge University Press.
- Africa Watch. 1992. *Accountability in Namibia. Human Rights and the Transition to Democracy*. New York: Africa Watch.
- Andreassen, Baard-Anders and Elin Skaar (eds.). 1998. *Forsoning eller rettferdighet? Om beskyttelse av menneskerettighetene gjennom sanningskommisjoner og rettstribunaler*. Oslo: Capellen Akademisk Forlag.
- Bratton, Michael and Nicolas van de Walle. 1997. *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. Cambridge: Cambridge University Press.
- Bronkhorst, Daan. 1995. *Truth and reconciliation. Obstacles and opportunities for human rights*. Amsterdam: Amnesty International Dutch Section.
- Brown, Frederick Z. 1993. "Cambodia in 1992. Peace at Peril", *Asian Survey*, Vol. XXXIII, No. 1, pp. 83-90. University of California Press.
- Brysk, Alison. 1994. "The Politics of Measurement: The Contested Count of the Disappeared in Argentina", *Human Rights Quarterly*, Vol. 16, No. 4, pp. 676-692.
- Dion, Douglas. 1998. "Evidence and Inference in the Comparative Case Study", *Comparative Politics*, Vol. 30, No. 2, pp. 127-145.
- The Economist*, various issues.
- Enslaco, Mark. 1994. "Truth Commissions for Chile and El Salvador: A Report and Assessment", *Human Rights Quarterly*, Vol. 16, No. 4, pp. 656-675.
- Froyland, Annette, Ann-Charlotte Nilsson and Astri Suhrke. 1998. "Rwanda: Hverken rettferd eller fred", in Andreassen and Skaar (eds.).
- Gairdner, David. 1998. "Truth in Transition: Towards an Understanding of the Role of Truth Commissions in Political Transition", in Andreassen and Skaar (eds.).
- Geddes, Barbara. 1994. *Politician's Dilemma. Building State Capacity in Latin America*. Berkeley and Los Angeles, CA: University of California Press.



- Geddes, Barbara. 1990. "How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics", *Political Analysis* 2, pp. 131-150.
- Hayner, Pricilla B. 1994. "Fifteen Truth Commissions - 1974 to 1994: A Comparative Study", *Human Rights Quarterly*, Vol. 16, No. 4, pp. 597-655.
- Hunter, Wendy. 1998. "Negotiating Civil-Military Relations in Post-Authoritarian Argentina and Chile", *International Studies Quarterly*, Vol. 42, No. 2, June, pp. 295-317.
- Huntington, Samuel P. 1991. *The Third Wave: Democratization in the Late Twentieth Century*. Norman and London: Cambridge University Press.
- Karl, Terry Lynn, and Philippe C. Schmitter. 1991. "Modes of Transition in Latin America, Southern and Eastern Europe", *International Social Science Journal*, No. 128, pp. 269-89.
- Kaye, Mike. 1997. "The Role of Truth Commissions in the Search for Justice, Reconciliation and Democratisation: The Salvadoran and Honduran Cases", *Journal of Latin American Studies*, Vol. 29, Part 3, October, pp. 693-716. London: Cambridge University Press.
- Kritz, Neil (ed.). 1995. *Transitional Justice. How Emerging Democracies Reckon With Former Regimes*, Vols. I-III. Washington D.C.: United States Institute of Peace Press.
- Lee, Hong Yung. 1993. "South Korea in 1992. "A Turning Point in Democratization", *Asian Survey*, Vol. XXXIII, No. 1, pp. 32-42. University of California Press.
- LeMarchand, Rene. 1994. "Managing Transition Anarchies: Rwanda, Burundi, and South Africa in Comparative Perspective", *The Journal of Modern African Studies*, Vol. 32, No. 4, pp. 581-604. Cambridge University Press.
- Liebenberg, Ian. 1998. "Debating our past: the road to a human rights culture", *In Focus Forum*, Vol. 5, No. 5, HSRC/RGN.
- Liebenberg, Ian. 1996. "The Truth and Reconciliation Commission in South Africa: context, future and some imponderables", *SAPR/PL*, Vol. 11.
- Mainwaring, Scott. 1992. "Transitions to Democracy and Democratic Consolidation: Theoretical and Comparative Issues", in Mainwaring et.al. *Issues in*

- Democratic Consolidation. The New South American Democracies in Comparative Perspective*. Notre Dame, IN: University of Notre Dame Press.
- Malamud-Goti, Jaime. 1990. "Transitional Governments in the Breach: Why Punish State Criminals?", in *Human Rights Quarterly*, Vol. 12, No. 1, pp. 1-16.
- Mayorga, Renè Antonio. 1997. "Democracy Dignified and an End to Impunity: Bolivia's Military Dictatorship on Trial", in McAdams (ed.), pp. 61-92.
- McAdams, James A. (ed.). 1997. *Transitional Justice and the Rule of Law in New Democracies*. Notre Dame, IN: University of Notre Dame Press.
- Mèndez, Juan E. 1997. "Accountability for Past Human Rights Abuses", *Human Rights Quarterly*, Vol. 19, No. 2, pp. 255-282.
- Miles, William F.S. 1995. "Tragic Tradeoffs: Democracy and Security in Chad", *The Journal of Modern African Studies*, Vol. 33, No. 1, pp. 53-65. Cambridge University Press.
- The New York Times*, various issues.
- O'Donnell, Guillermo. 1992. "Transition, Continuities and Paradoxes", in Mainwaring et.al. *Issues in Democratic Consolidation. The New South American Democracies in Comparative Perspective*. Notre Dame, IN: University of Notre Dame Press.
- O'Donnell, Guillermo. 1986. "Introduction to the Latin American Cases", in O'Donnell, Guillermo, Philippe C. Schmitter, and Laurence Whitehead (eds.). *Transitions From Authoritarian Rule. Latin America*, Vol. 2. Baltimore and London: The John Hopkins University Press.
- Panizza, Francisco. 1995. "Human Rights in the Process of Transition and Consolidation of Democracy in Latin America", *Political Studies*, Vol. XLIII, pp. 168-188.
- Pion-Berlin, David. 1994. "To Prosecute or to Pardon? Human Rights Decision in the Latin American Southern Cone", *Human Rights Quarterly*, Vol. 16, No. 1, pp.105-130.
- Pion-Berlin, David and Craig Arceneaux. 1998. "Tipping the Civil-Military Balance. Institutions and Human Rights Policy in Democratic Argentina and Chile", *Comparative Political Studies*, Vol. 31, No. 5, pp. 633-661.

- Przeworski, Adam. 1991. *Democracy and the Market: Political and Economic Reform in Eastern Europe and Latin-America*. Cambridge: Cambridge University Press.
- Snow, Peter G. and Luigi Manzetti. 1993 (3<sup>rd</sup> ed.). *Political Forces in Argentina*. Westport, CT: Praeger.
- Steiner, Henry J. et.al. 1997. *Truth Commissions: A Comparative Assessment: An Interdisciplinary Discussion Held At Harvard Law School in May 1996*, Human Rights Program at Harvard Law School and the World Peace Foundation.
- Stotzky, Irwin P. 1997. *Silencing the Guns in Haiti. The Promise of Deliberative Democracy*. Chicago and London: The University of Chicago Press.
- Sutil, Jorge Correa. 1997. ““No Victorious Army Has Ever Been Prosecuted...” The Unsettled Story of Transitional Justice in Chile”, in McAdams (ed.), pp. 123-154.
- Tronvoll, Kjetil. 1998. “Etiopias Rettsoppgjoer: Soeken Etter Rettferdighet Eller Skapelsen av Politisk Legitimitet?”, in Andreassen and Skaar (eds.).
- Tsebelis, George. 1990. *Nested Games. Rational Choice in Comparative Politics*. Berkeley and Los Angeles, CA: University of California Press.
- Vilas, Carlos M. 1996. “Prospects for Democratisation in a Post-Revolutionary Setting: Central America”, *Journal of Latin American Studies*, Vol. 28, Part 2, pp. 461-503. London: Cambridge University Press.
- Villegas, Bernardo M. 1987. “The Philippines in 1986. Democratic Reconstruction in the Post-Marcos Era”, *Asian Survey*, Vol. XXVII, No. 2, pp. 194-205. University of California Press.
- Walsh, Brian. 1996. “Resolving the Human Rights Violations of a Previous Regime”, *World Affairs*, Vol. 158, No. 3, pp. 111-135.
- Zalaquett, Josè. 1995. “Balancing the Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations”, in Kritz (ed.).