



# Truth commissions, trials—or nothing? Policy options 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 violations committed by officials of previous authoritarian regimes. Empirical evidence from around 30 (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. Where human rights policy deviates from predictions, the government always does less than expected. These arguments hold true both at the time of regime change and during the consolidation phase, as power dynamics often change over time.*

The least unsatisfactory course may well be:  
Do not prosecute,  
Do not punish,  
Do not forgive,  
And above all,  
Do not forget<sup>1</sup>

## **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

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former, the new democratic government may risk losing popular support and legitimacy, as well as risk failing to build respect for the rule of 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 past gross human rights violations, a democratic transition government's three choices in the field of human rights are truth commissions (disclosing the 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 is 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.<sup>2</sup> Arguments such as that trials can only occur where there has been total regime collapse, or that truth commissions are compromise solutions are common.<sup>3</sup> Yet these and similar rather intuitive statements have, to my knowledge, not been rigorously tested. Samuel Huntington's comprehensive comparative study of how different countries have contended with the problem of gross human rights violations offers valuable insight about individual cases,<sup>4</sup> but no scholar has systematically tested common explanations for choice of policy across countries. Similarly, the literature on the interim official fact-finding bodies called truth commissions is also predominantly descriptive. Pricilla Hayner and Daan Bronkhorst have documented the existence and work of a large number of such truth commissions, but they offer no good analytical explanation for their occurrence.<sup>5</sup> This paper seeks to fill these gaps. I investigate the existing universe of truth commissions and trials after the onset of the third wave of democratisation starting in the mid-1970s 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.

### **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.<sup>6</sup> 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.<sup>7</sup> 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, who the targeted victims were, and how well their interests are represented organisationally.<sup>8</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>9</sup> is the type of response that the violations provoke. Human rights violations tend to mobilise different sectors of society with 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<sup>10</sup> 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 their 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 supporters, 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, that is, to 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, to have the guilty put on trial and convicted. This may be summed up as a public demand for 'truth' and 'justice', respectively.<sup>11</sup>
3. The transitional democratic government's primary interest is staying in power; that means surviving the first electoral period by creating an environment of political stability. Second, the government must try to achieve the long-term goals of democratic consolidation through establishing respect for the rule of law (hence demonstrating the willingness to break with a dictatorial past), building legitimacy and strengthening faith in the new democratic institutions.<sup>12</sup> Achieving national reconciliation is also an important long-term political objective.

We may further assume that all three actors want to preserve democracy. Although democratically elected governments may be motivated to confront 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.<sup>13</sup> The military will only take the cost of staging a coup if its reputation is severely at stake, that is, when being threatened by trials. The worst possible scenario for the public is the breakdown of democracy and a reversion to authoritarianism.

### *Policy options*

The democratic government has three principal policy choices in dealing with conflicting demands from the public and the outgoing regime.<sup>14</sup> It may simply do nothing (option 1). Second, 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. In return for the exchange of information, truth

commissions often offer a promise of partial or blanket amnesty.<sup>15</sup> Since truth commissions have, with few exceptions, not had the judicial right to try the culprits, the government's third strategy is to instigate legal redress by prosecuting individual people and meting out punishment (option 3).

The democratic government's optimal choice would be one that allows it to achieve both its short-term and long-term goals. However, where there is a potential conflict between the two, it has to prioritise political survival. 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 outgoing regime or the public to impose 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 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 the military forces, it cannot threaten the new government with 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 in the way that a coup does, but it may have serious effects on a government's long-term goals of building legitimacy and support for its policies. First, the general public may punish the government electorally if discontented with its policies. Second, special-interest organisations, such as human rights groups, may be small in numbers but high in 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 their reputation. In addition to moral condemnation, the international community may also pose threats of boycotts 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 inaction, will grudgingly accept truth commissions, 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 inaction to avoid a military coup. The government is an autonomous actor which preserves itself by responding to demands from the military and the public. However, the government also has its own agenda, depending on its bias, which will make it choose either inaction or an active human rights policy in the cases where it can act autonomously. We expect the government to act autonomously only when the military is weak, since it always has to take the potential threat of a coup seriously. Based on these assumptions, we expect the policy outcomes presented in Table 1.

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

TABLE 1  
**Expected policy outcomes**

		<i>Outgoing regime</i>	
		<u><i>Strong</i></u>	<u><i>Weak</i></u>
<i>Public demand</i>	<u><i>Strong</i></u>	Truth commissions	Trials
	<u><i>Weak</i></u>	Nothing	Unresolved

regime. Because the outgoing regime can only threaten the new government when it wields control over the military forces, I shall henceforth refer to the outgoing regime as ‘the military’. 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. 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.

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 argue that power dynamics 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.

### **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 the previous section. 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 depends on the relative strength of these demands.

### *Case selection*

About 50 countries have undergone democratic transition over the past three decades, but only a third have dealt actively with the legacy of human rights violations.<sup>16</sup> Narrowing the focus of the analysis to democratic transition after the mid-1970s 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. 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 that both Hayner and Bronkhorst failed to make in their broad comparative studies of truth commissions.<sup>17</sup> Second, I do not address trials during transitions instigated for purposes other than that of prosecuting people for gross human rights violations. Hence, I exclude from my analysis the so-called *Iustration* processes (also called ‘cleansing’, meaning purging from the public sector those who served in repressive regimes) instigated in Eastern European countries after the demise of communism in the late 1980s and, very recently, in South Korea.<sup>18</sup> I also exclude the trials of those plotting to overthrow Gorbachev in 1994. Table 2 displays an exhaustive list of the policy choices of transitional governments that have either set up truth commissions or held trials fitting my working definitions.<sup>19</sup> As ‘negative’ or ‘control’ cases I have included a selection of countries where either (i) there has been a demand for truth and justice but the government has responded negatively, or (ii) the transitional context would have led us to expect public demand for dealing with the past but this has not happened. 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 national or international non-governmental organisations have instigated truth commissions or trials.

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

To what extent can the policy choices outlined in Table 2 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, argued that the slower and more controlled the transition, the stronger the bargaining power of the outgoing regime *vis-à-vis* the incoming regime.<sup>20</sup> 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.<sup>21</sup> 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 literature, I have broadly ordered the types of transition into collapse, pacted, and peace agreements, depending on (i) the extent of negotiation that took place and (ii) whether international actors brokered the peace or not.<sup>22</sup> I have used information about what type of transition the countries in Table 2 have undergone as a basis for classifying the

TABLE 2  
Truth commissions, trials, both, or nothing?

<i>Sponsor</i>	<i>Truth commissions</i>	<i>Trials</i>	<i>Both</i>	<i>Nothing</i>
National government	Phillippines (1986)	Greece (1975–76)	Bolivia (1982)/(1986–93)	South Korea*
	Uganda (1986)	Rwanda (1994–)	Argentina (1983)/(1985)	Colombia*
	Chad (1990)	Malawi (1995)	East Germany (1992–)/(1992–)	Indonesia*
	Chile (1990)		Ethiopia (1992)/(1997–)	Namibia*
	Haiti (1995)			Angola**
	South Africa (1995)			Mozambique**
				Eastern European countries**
Non-govt or international	Brazil (1985)	Yugoslav (1994–)	Rwanda (1993)/(1994–)	Cambodia*
	Uruguay (1985)			
	El Salvador (1991)			
	Guatemala (1996)			

*Notes:* The year refers to when the truth commission was established or when 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 (see PB Hayner, 'Fifteen truth commissions—1974 to 1994; a comparative study', *Human Rights Quarterly*, 16(4), 1994, p 605); Rwanda (see A Froyland, AC Nilsson & A Suhrke, 'Rwanda: neither justice nor peace', in BA Andreassen & E Skaar (eds), *Reconciliation or Justice? Protecting Human Rights Through Truth Commissions and Trials* (in Norwegian), Oslo: Cappelen Akademisk Forlag, 1998, p 302); Namibia (see N Kritz (ed), *Transitional Justice. How Emerging Democracies Reckon With Former Regimes*, Vol II, Washington, DC: United States Institute of Peace Press, 1995, p xi); Indonesia (*The Economist*, 6–12 June 1998), and Cambodia (*New York Times*, 13 January 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.

*Sources:* D Bronkhorst, *Truth and Reconciliation. Obstacles and Opportunities for Human Rights*, Amsterdam: Amnesty International Dutch Section, 1995; PB Hayner, 'Fifteen truth commissions—1974 to 1994: a comparative study', *Human Rights Quarterly*, 16(4), 1994, pp 597–655; M Kaye, 'The role of truth commissions in the search for justice, reconciliation and democratisation: the Salvadoran and Honduran cases', *Journal of Latin American Studies*, 29(3), 1997, pp 693–716; N Kritz (ed), *Transitional Justice. How Emerging Democracies Reckon With Former Regimes*, Vols I–III, Washington, DC: United States Institute of Peace Press, 1995; JA McAdams (ed), *Transitional Justice and the Rule of Law in New Democracies*, Notre Dame, IN: University of Notre Dame Press, 1997.

outgoing regime as 'defeated', 'weak' or 'strong'. I have classified the outgoing regime as 'defeated' (D) in transitions by *collapse*, that is where the outgoing regime has suffered defeat in war (in the case of military regimes), or been forced to flee the country (in the case of civilian dictatorships), or has been severely discredited for other reasons. In the rare cases of transition by 'collapse' where the outgoing regime is reported in the literature to have remained party to the bargaining process, in spite of having lost much of its legitimacy, I have classified it as 'weak' (W). Note that a defeated military poses no initial threat to the new democratic government, whereas a weak military may regain strength over time.

I have given the outgoing regime the label ‘strong’ (S) in two types of scenarios: first, in transitions that have been gradual, controlled, and authoritarian-initiated, that is, transitions where there has been a relatively fair power balance between the incoming and the outgoing regime. In these so-called *pacted* transitions, the outgoing regime is expected to be coherent, relatively unified, and thus have a substantial say in the proceedings of the transition process. Second, I have classified the outgoing regime as ‘strong’ (S) in cases where an international broker has negotiated a peace settlement after a prolonged civil war and the outgoing regime has been party to the bargaining process.

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 who 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 (presumably reflecting the preferences of the voters).

Conversely, public demand is recorded as ‘weak’ (W) if no apparent credible pressure for truth and/or justice has been placed on the government. This may be because (i) the public simply does not want such policies to be enacted, or (ii) the public wants such policies, but fails to put pressure on the government out of fear of retribution, or (iii) the public is too disorganised to make its demands effective. The (largely subjective) assessment of this kind of information is presented in Table 3.<sup>23</sup>

### *Linking strength to strategy*

I have next used the information of the relative—credible—strength of public demand and that of the outgoing regime reported in Table 3 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, Table 4 shows that our model correctly predicts policy outcomes for a large number of 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.



*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. 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.<sup>24</sup> The transition in Haiti resulted from a negotiated peace settlement combined with US military intervention, where the Haitian outgoing regime's demand for impunity was secured through an amnesty law.<sup>25</sup>

Correct predictions were also made for several countries staging trials, either separately (Greece, Yugoslavia and Malawi), or in combination with truth commissions (Bolivia, Argentina, East Germany, Ethiopia and Rwanda). 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, correct predictions were made regarding 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.<sup>26</sup> 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, where the bargaining parties agreed to set up truth commissions.

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 Ceausescus were forced from power and summarily executed after *ad hoc* trials). As expected in a weak-strong scenario, the new democratic governments did nothing. However, an intriguing question presents itself: why have these countries, with histories tainted by massive and systematic human rights violations and organised civil societies, not had 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 has been directly or indirectly associated with the outgoing communist regimes, and therefore has had its own interests to protect. The issue of collaboration may thus offer at least a partial explanation for why

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

Country	Year	Type of 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	
Yugoslavia	1994	Collapse		D	X				X				X	
Bolivia	1982	Collapse (tp)		W	X			X		X		NR	X	
Argentina	1983	Collapse (rp)		D	X			X		X		X	X	
E Germany	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	
Philipp	1986	Collapse (rp)		W	X			X				NR		X
Uganda	1986	Collapse (NC)		D	X			X		X		X		X
Uganda	1990	Collapse (NC)		D	X			X		X		X		X
Uruguay	1984	Pacted (tp)	X	X	X			X		X		X	X	
Brazil	1985	Pacted (tf)	X	X	X			X		X		X	X	
Chile	1990	Pacted (tf)	X	X	X			X		X		X	X	
S Africa	1994	Pacted (tp)	X	X	X			X		X		X	X	
El Salv	1992	Peace agr (tp)	X	X	X				X	X		X	X	
Guatemala	1996	Peace agr (tf)	X	X	X				X	X		X	X	
Haiti	1994	Peace agr	X	X	X				X	X		NR	X	
Namibia	1990	Peace agr (PA)	X	X	X				X	X		X	X	
Cambodia	1991	Peace agr	X	X	X				X	X		X	X	
Angola	1992	Peace agr (PA)	X	X		X			X	X		X	X	
Mozamb	1992	Peace agr (PA)	X	X		X			X	X		X	X	
S Korea	1992	Pacted (tp)	X	X				X				X	X	
Indonesia	1998	Pacted	X	X				X		X		X	X	
Bulgaria	1989	Pacted (tf)	X	X		X		X		X		X	X	

Czechoslovakia	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

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) 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.

Source: C Alden & M Simpson, 'Mozambique: a delicate peace', *Journal of Modern African Studies*, 31(1), 1993, pp 109–130; BA Andreassen & E Skaar (eds), *Reconciliation or Justice? Protecting Human Rights Through Truth Commissions and Trials* (in Norwegian), Oslo: Cappelen Akademisk Forlag, 1998; M Bratton & N van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge: Cambridge University Press, 1997; D Bronkhorst, *Truth and Reconciliation, Obstacles and Opportunities for Human Rights*, Amsterdam: Amnesty International Dutch Section, 1995; PB Hayner, 'Fifteen truth commissions—1974 to 1994: a comparative study', *Human Rights Quarterly*, 16(4), 1994, pp 597–655; SP Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Norman & London: Cambridge University Press, 1991; TL Karl & PC Schmitter, 'Modes of transition in Latin America, Southern and Eastern Europe', *International Social Science Journal*, 128, 1991, pp 269–289; M Kaye, 'The role of truth commissions in the search for justice, reconciliation and democratisation: the Salvadoran and Honduran cases', *Journal of Latin American Studies*, 29(3), 1997, pp 693–716; R LeMarchand, 'Managing transition anarchies: Rwanda, Burundi, and South Africa in comparative perspective', *Journal of Modern African Studies*, 32(4), 1994, pp 581–604; JA McArdams (ed), *Transitional Justice and the Rule of Law in New Democracies*, Notre Dame, IN: University of Notre Dame Press, 1997; WFS Miles, 'Tragic tradeoffs: democracy and security in Chad', *Journal of Modern African Studies*, 33(1), 1995, pp 53–65; IP Stotzky, *Silencing the Guns in Haiti. The Promise of Deliberative Democracy*, Chicago: University of Chicago Press, 1997; J Zalaquett, 'Balancing the ethical imperatives and political constraints: the dilemma of new democracies confronting past human rights', *Hastings Law Journal*, 43(6), 1992, pp 1426–1432.

TABLE 4  
Actual policy outcomes

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

Notes: T = trials, TC = truth commissions, N = nothing. Countries in italics are 'deviant' cases.

Source: Information synthesised from Table 3.

justice in Eastern Europe has been sought through the process of lustration rather than through prosecution for human rights violations.<sup>27</sup>

#### *Deviant cases and systematic patterns*

Although there is 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 the lack of executive commitment to the process of human rights. In Uganda, Namibia, South Korea and Indonesia, 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 donors pressuring him 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 Museveni's political agenda.<sup>28</sup> President Nujoma of Namibia is known to have strong affiliations with the South West African People's Organisation (SWAPO), which 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.<sup>29</sup> 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 the 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 marked an important democratic opening in Indonesian politics. However, his appointed successor, President Habibie, has strong interests 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.<sup>30</sup> The survival of the Khmer Rouge leadership until 1998 has presented a dormant, though constant, threat to the new government. The situation in the Philippines was different, yet 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. The Aquino government faced severe opposition and three successive tentative military coups right after coming to power and judged it as politically unfeasible to push any further for truth or trials.<sup>31</sup> These two examples suggest 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 governments have done less than expected to resolve the legacy of past human rights violations is simply a lack of functioning political institutions. Chad after the overthrow of Habré's regime in 1990 is a good example. The democratic government set up a truth commission to investigate abuses carried out under Habré's despotic three decade-long rulership, and the new 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, the absence of the rule of law, internal factions and ethnic conflict, it is hardly surprising that trials have not been held in Chad.<sup>32</sup>

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 political chaos. One important 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 truth commissions or trials in countries where public demand for truth and justice has been weak, even where the outgoing regime had been defeated. This systematic pattern displayed by the deviant cases supports my second argument that a democratic government is more likely to err on the side of doing too little rather than too much with respect to the politically contested issue of past human rights violations.

*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, 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 changes over time. Table 5 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 type.

Three patterns are worth noting. First, 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'. Second, where the main bargaining takes place at the time of regime change ( $t + 1$ ), the range of policy solutions is much wider. Third, we note that to date at least four countries (Chile, Bolivia, Argentina and South Africa) have had policy reversals in the field of human rights in the consolidation phase ( $t + 2$ ).

Argentina is the only case where the government initiated a human rights policy it was forced to back down on. Alfonsín's famous trials and conviction of seven Argentinean generals in 1985 were reversed when Menem came to power in 1990 and issued sweeping pardons—after three unsuccessful military revolts. Thus, the military junta, initially emerging weak and discredited after its defeat in the Falklands War, was able to close ranks, regain strength and present a real threat to the government. This eventually led to a policy reversal in favour of the military.

For Bolivia and Chile, the situation has been exactly the opposite. In Bolivia, 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. In Chile, ex-dictator Augusto

TABLE 5  
Bargaining over human rights in transitions to democracy

<i>t - 1</i>		<i>t + 1</i>		<i>t + 2</i>	
<i>Country</i>	<i>Policy</i>	<i>Country</i>	<i>Policy</i>	<i>Country</i>	<i>Policy</i>
Uruguay 1985	TC	Greece 1975	T		
Brazil 1985	TC	Yugoslavia 1992	T		
Chile 1990	TC	Malawi 1995	T	Chile 1995/1999	T/T?
El Salvador 1992	TC	Bolivia 1982	T + TC	Bolivia 1989/1999	T/T?
Haití 1995	TC	Argentina 1983	T + TC	Argent 1989/1999	No T/T?
S Africa 1995	TC	Ethiopia 92/97	T + TC	S Africa 1998/1999	T/T?
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		
		Cambodia 1991	N	Cambodia 1999	TC/T?
		Angola 1992	N		
		Mozamb 1992	N		
		S Korea 1992	N		
		Indonesia 1998	N	Indonesia 1999	TC/T?
		Bulgaria 1989	N		
		Czechosl 1989	N		
		Poland 1989	N		
		Hungary 1989	N		
		Romania 1989	N		

*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.

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

Pinochet initially succeeded in securing 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 in July of the same year showed that 65.8% of Chileans polled agreed that the generals should serve time.<sup>33</sup> 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 considers the protection of its interests dear enough to threaten the government.

Recent development indicates further changes in favour of increased justice in these three countries. If Pinochet is asked to stand trial on charges of murder and genocide while heading the military junta before 1989, 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 Pinochet's arrest in England in October 1998, 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 the 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 trials against former army general and dictator and present head of state, President Hugo Banzer.<sup>34</sup> Note also that 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 have thus far been reluctant to embark on a quest for truth and justice are currently in the process of considering possible action in the field of human rights. Recent public demand for truth and justice in Indonesia, particularly manifested through student demonstrations, and intensified after the June 1999 elections, might open up the possibility of a truth commission or trials or both. In Cambodia, the death of Khmer Rouge's prime and feared leader, Pol Pot, in 1998 has encouraged public pressure for trials, thus forcing the present democratic government to deal with the past many years into the process of democratic consolidation.<sup>35</sup> The government recently asked the UN for help in drafting a law that would allow a tribunal to be set up domestically, with foreign judges and lawyers working alongside their Cambodian counterparts to prosecute the remaining Khmer Rouge leaders.<sup>36</sup>

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 from 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 democratic government to implement more pro-human rights policies.

### **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 worst-case scenario for both the democratic government and the public would be democratic breakdown in form of a coup. Hence both sides may be willing to back down on their demands in order to preserve democracy. Third, I have argued that, as democracy solidifies over time, the democratic government may gradually become 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 if the military is perceived as sufficiently weak or unwilling to impose sanctions on the government.

My empirical analysis of about 30 mainly Latin American and African



countries undergoing democratic transition after the mid-1970s lends substantial support to all three arguments. An exhaustive analysis of those governments that chose truth commissions or trials in response to conflicting demands from the public and the outgoing regime showed that choices tended towards trials as the military was weaker and towards nothing as the military was stronger. 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 did not expect the military to take on the costs of staging a coup, especially since amnesty laws that exempt the military from prosecution have usually accompanied truth commissions. Since the government wanted to please the electorate and give a favourable impression to the international community, it established a truth commission as a first step in the quest for truth and justice.

The cases that deviate from our model display two noticeable trends. First, public demand seems to be a necessary, though not sufficient condition, for a democratic government to establish truth commissions or hold trials. Second, there is no empirical evidence of governments having implemented stronger measures to resolve the human rights question than our model predicts. These two findings jointly demonstrate that democratic governments have frequently tended to accomplish less in the field of human rights than the balance-of-power argument would suggest, thus supporting my second argument regarding prudence on the government's side. Alternative explanations briefly suggested are the lack of executive will to implement human rights policies (often because of strong links to the outgoing regime or the military), or continued threat from the military or outgoing authoritarian leadership.

Finally, I have 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 as democracy becomes consolidated.

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

There are at least three ways of expanding or improving this analysis: by adding more cases; 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 were held 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, Sierra Leone and Colombia, should they one day come to peace, may be added to the list. Second, a more integrated approach using a formal nested games model could refine the balance-of-power argument by allowing us to reflect the preferences of the executive where these deviate from what the balance-of-power argument predicts. Such an approach may further allow us to include other actors that potentially may influence policy making in the human rights field, such as the judiciary.<sup>37</sup> Finally, it might also be useful to analyse to what degree institutional factors influence policy outcomes. More specifically, we could examine 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>38</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 enhance our understanding of when and why democratic governments frequently opt for a strategy of forgive and forget, rather than seeking justice through prosecution and punishment of human rights violators.

## Notes

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<sup>1</sup> SP Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Cambridge: Cambridge University Press, 1991, p 231.

<sup>2</sup> See TL Karl & Schmitter, 'Modes of transition in Latin America, Southern and Eastern Europe', *International Social Science Journal*, 128, 1991, pp 269–289; and G O'Donnell, 'Introduction to the Latin American cases' in G O'Donnell, PC Schmitter & L Whitehead (eds), *Transitions From Authoritarian Rule: Latin America*, Vol 2, Baltimore, MA: John Hopkins University Press, 1986.

<sup>3</sup> RA Mayorga, 'Democracy dignified and an end to impunity: Bolivia's military dictatorship on trial', and JC Sutil, '“No victorious army has ever been prosecuted ...” the unsettled story of transitional justice', both in JA McAdams (ed), *Transitional Justice and the Rule of Law in New Democracies*, Notre Dame, IN: University of Notre Dame Press, 1997, pp 61–92, 123–154, respectively; and B Walsh, 'Resolving the human rights violations of a previous regime', *World Affairs*, 158(3), 1996, pp 111–135.

<sup>4</sup> Huntington, *The Third Wave*.

<sup>5</sup> See PB Hayner, 'Fifteen truth commissions—1974 to 1994: a comparative study', *Human Rights Quarterly*, 16(4), 1994, pp 597–655; and D Bronkhorst, *Truth and Reconciliation, Obstacles and Opportunities for Human Rights*, Amsterdam: Amnesty International Dutch Section, 1995.

<sup>6</sup> For a thorough discussion, see A Przeworski, *Democracy and the Market: Political and Economic Reform in Eastern Europe and Latin America*, Cambridge: Cambridge University Press, 1991.

<sup>7</sup> For different views on elite-focused transition theory, see W Hunter, 'Negotiating civil—military relations in post-authoritarian Argentina and Chile', *International Studies Quarterly*, 42(2), 1998, pp 295–317; Karl & Schmitter, 'Modes of transition in Latin America, Southern and Eastern Europe'; O'Donnell, 'Introduction to the Latin American Cases'; and Przeworski, *Democracy and the Market*.

<sup>8</sup> It is a sad fact that the disappearance or murder of individual prominent left-wing politicians or foreigners has 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>9</sup> See, for example, A Brysk, 'The politics of measurement: the contested count of the disappeared in Argentina', *Human Rights Quarterly*, 16(4), 1994, pp 676–692.

<sup>10</sup> 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 among the public who supported the outgoing regime and those who favour the new democratic government; or tension between the executive, legislative and judicial branches of the government. Yet the government (ie 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. 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 which supports or opposes a given human rights policy.

- <sup>11</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. It is inevitable that society may not always demand both truth and justice. However, I assume that the demand for justice is a politically more sensitive claim than the demand for truth because the risk involved in the prosecution of perpetrators (that is sanctions in form of a coup) is arguably higher than disclosing the facts about the violations. For a debate on how truth and justice may affect the prospects for reconciliation, see D Bronkhorst, *Truth and Reconciliation*; N Kritz (ed), *Transitional Justice. How Emerging Democracies Reckon With Former Regimes*, Vols I–III, Washington, DC: United States Institute of Peace Press, 1995; and J Zalaquett, 'Balancing the ethical imperatives and political constraints: the dilemma of new democracies confronting past human rights', *Hastings Law Journal*, 43(6), 1992, pp 1426–1432.
- <sup>12</sup> Though a poorly defined term in the literature, 'democratic consolidation' has frequently been linked both to democratic stability and democratic institutionalisation. Adam Przeworski defines a democracy as consolidated when 'a particular system of institutions becomes the only game in town'. See A Przeworski, *Democracy and the Market*, p 26. Guillermo 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 private spheres. See G O'Donnell, 'Transition, continuities and paradoxes', in S Mainwaring *et al* (eds), *Issues in Democratic Consolidation: The New South American Democracies in Comparative Perspective*, Notre Dame, IN: University of Notre Dame Press, 1992, pp 48–49.
- <sup>13</sup> This convincing argument is presented by W Hunter, 'Negotiating civil–military relations in post-authoritarian Argentina and Chile'.
- <sup>14</sup> For a discussion of a wide range of policy options in the field of human rights, including reparation of various sorts, see B Walsh, 'Resolving the human rights violations of a previous regime', *World Affairs*, 158(3), 1996, pp 111–135.
- <sup>15</sup> Also, such commissions exist temporarily for a predefined period of time and cease to exist when they have reported their findings. They are usually vested with special authority by their sponsors (ie the president or other high official) that allows them access to information, security or protection to dig into sensitive issues. These characteristics are largely based on Hayner's classic definition of truth commissions. See PB Hayner, 'Fifteen truth commissions'.
- <sup>16</sup> These figures are estimated on the basis of information given by M Bratton & N van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge: Cambridge University Press, 1997; Hayner, 'Fifteen truth commissions'; and Huntington, *The Third Wave*. 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, such a test is beyond the scope of this paper.
- <sup>17</sup> For a discussion of their criteria defining truth commissions, see D Bronkhorst, *Truth and Reconciliation*; and Hayner, 'Fifteen truth commissions'.
- <sup>18</sup> For good accounts of the lustration processes in Czechoslovakia, Poland, Hungary and Bulgaria, see, for example, D Bronkhorst, *Truth and Reconciliation*; Kritz, *Transitional Justice*; and McAdams, *Transitional Justice and the Rule of Law in New Democracies*.
- <sup>19</sup> In Table 2 I have excluded four of the bodies defined as truth commissions by Hayner, 'Fifteen truth commissions', 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 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. 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 Servicio de Paz y Justicia (Service for Peace and Justice (SERPAJ) in Uruguay. Also, I have included the recent truth commissions in South Africa and Guatemala.
- <sup>20</sup> Two classic accounts of this type of transition theory are found in Karl & Schmitter, 'Modes of transition in Latin America, Southern and Eastern Europe'; and G O'Donnell, 'Transition, continuities and paradoxes'.

<sup>21</sup> For the African cases, see Bratton & van de Walle, *Democratic Experiments in Africa*. For the Eastern European cases, see Huntington, *The Third Wave*.

<sup>22</sup> Terry Lynn Karl and Philippe C. 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 other's interests'. See Karl & Schmitter, 'Modes of transition in Latin America, Southern and Eastern Europe,' p 281. I here use 'pact' in a slightly broader sense, which incorporates Huntington's partly overlapping terms of transformation and transplacement. See Huntington, *The Third Wave*, pp 121–151. Since terminology varies widely, I have used the different four-mode categories employed by Karl & Schmitter and Huntington above and by Bratton & van de Walle, *Democratic Experiments in Africa*, 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</i>	<i>Huntington</i>	<i>Bratton &amp; van de Walle</i>
Pacted	= pact	= transformation/transplacement	= pact
Collapse	= imposition	= replacement	= rapid elections
Peace agreement	= –	= intervention	= –

<sup>23</sup> The cases are sorted according to (1) the type of policy adopted by the democratic government; (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.

<sup>24</sup> For El Salvador, see M Kaye, 'The role of truth commissions in the search for justice, reconciliation and democratisation: the Salvadoran and Honduran cases', *Journal of Latin American Studies*, 29(3), 1997, pp 93–716. For Guatemala, see D Gairdner, 'Truth and regime change: the role of truth commissions in transitions from authoritarianism to democracy', in BA Andreassen & E Skaar (eds), *Reconciliation or Justice? Protecting Human Rights Through Truth Commissions and Trials*, Oslo: Cappelen Akademisk Forlag, 1998, pp 135–175 (in Norwegian).

<sup>25</sup> See IP Stotzky, *Silencing the Guns in Haiti. The Promise of Deliberative Democracy*, Chicago, IL: University of Chicago Press, 1997.

<sup>26</sup> C Alden & M Simpson, 'Mozambique: a delicate peace', *Journal of Modern African Studies*, 31(1), 1993, pp 109–130.

<sup>27</sup> See various country-specific articles in Kritiz, *Transitional Justice*.

<sup>28</sup> See Hayner, 'Fifteen truth commissions'.

<sup>29</sup> For accounts of the Namibian transition process, see Africa Watch, *Accountability in Namibia. Human Rights and the Transition to Democracy*, New York: Africa Watch, 1992.

<sup>30</sup> FZ Brown, 'Cambodia in 1992. Peace at peril', *Asian Survey*, XXXIII(1), 1993, pp 83–90.

<sup>31</sup> BM Villegas, 'The Philippines in 1986. Democratic reconstruction in the post-Marcos era', *Asian Survey*, XXVII(2), 1987, pp 194–205.

<sup>32</sup> WFS Miles, 'Tragic tradeoffs: democracy and security in Chad', *Journal of Modern African Studies*, 33(1), 1995, pp 53–65.

<sup>33</sup> W Hunter, 'Negotiating civil–military relations in post-authoritarian Argentina and Chile', *International Studies Quarterly*, 42(2), 1998, p 312.

<sup>34</sup> *The Economist*, 27 February–5 March 1999, p 34.

<sup>35</sup> According to two separate polls, between 75% and 80% of Cambodians favour an international tribunal. *New York Times*, 2 March 1999, pp A1, A8.

<sup>36</sup> *The Economist*, 29 May–4 June 1999, p 6.

<sup>37</sup> Based on the experiences of Chile and Argentina, Wendy Hunter has suggested such a complex nested games approach, formalising a three-way bargaining game 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. For details, see Hunter, 'Negotiating civil–military relations in post-authoritarian Argentina and Chile.' For an account of the theory of nested games, see G Tsebelis, *Nested Games: Rational Choice in Comparative Politics*, Berkeley, CA: University of California Press, 1990.

<sup>38</sup> David Pion-Berlin and Craig Argeneaux argue that success or failure of military suppression of human rights initiatives at the time of transition can not be fully explained 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. For details, see D Pion-Berlin & C Argeneaux, 'Tipping the civil–military balance: institutions and human rights policy in democratic Argentina and Chile', *Comparative Political Studies*, 31(5), 1998, p 633.