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Transitional justice across continents

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It is now more than four decades since the European Commission of Human Rights, at the request of four of its members, conducted its groundbreaking investigation into human rights violations in Greece in 1968. A newly established democratic government in Greece, as in Portugal, was to conduct unprecedented domestic human rights prosecutions against government officials of the preceding authoritarian regimes.[1]

It has been more than three decades since the Inter-American Commission on Human Rights, in its 1974 report on Chile, threw its weight behind the bold idea of domestic trials of state officials for human rights violations.[2] The 1975 Helsinki Final Act of the Conference on Security and Co-operation in Europe and its periodic review process set off a vibrant trans-Atlantic human rights movement targeting Warsaw Pact countries.

By comparison with many other occurrences in our accelerated cultural times, these events happened long ago. Indeed, for many that is exactly what transitional justice will seem to be all about – events that happened long ago. In some respects, that is right. In some ways, the worlds of oppression that we re-visit in this book are unimaginable today. Yet this did not happen by itself. Indeed, we could say that the making unimaginable of the past worlds of oppression is, unobtrusively, the greatest achievement of the movement to wring amends from those past worlds, which we call transitional justice.

In other ways, though, the stories we will be telling happened only yesterday and are part of tomorrow's story-lines. For the events we have just

commemorated can now be seen, in retrospect, as part of the beginnings of a new normative international era in which we look set to live for a considerable time to come. To go back, then, is also to understand how we are moving forward.

The "oppression" we are concerned with is that suffered by Latin American and East European countries under authoritarianism and Communism. Those countries made a transition to democratic rule. Their experiences of oppression were different, their ensuing trajectory was common. Their different and common experiences mark the parameters of this book. In it, the reader will find an overview of the challenges faced by political transitions and transitional justice efforts in a wide set of countries. The focus is especially on how various transitional justice mechanisms have worked, or not.

Transitional justice developments have become prominent in Africa and other parts of the world, but we have not attempted global inclusiveness. Our comparative space is that of the two continents whose difference and commonality most fully allow us to see transitional justice as both a diverse and a congruent journey.

The story of transitional justice is one of pasts and futures. On the one hand, what do societies that have come through hell do with their pasts? And then how do they attempt to ensure that darkness never again descends at noon? Beneath all the technicalities, these are the fundamental questions that animate this book. Its contributors do not play up the pathos of their cases, but their collective story is unmistakably that of the struggle against evil of many societies.

Transitional justice is an unprecedented enterprise. In the age of oppression, one or two visionaries imagined that the day of reckoning might one day come for omnipotent dictators and tyrants, but millions died without any shred of consolation that justice would one day be done to them. In previous geopolitical cataclysms, millions had also died on what Hegel – thinking of the French Revolution – called the slaughter-bench of history, yet no one had ever suggested that some kind of reparation be made to their memory and to the survivors. Transitional justice is, then, a phenomenon whose historical novelty ought always to impress us. Behind it is a complex interplay among domestic, regional and international processes in which two forces were becoming paramount: human rights and democracy. Latin America and Eastern Europe are the pioneering, still symptomatic cases where we see this.

Looking back, the adoption of the Helsinki Final Act in 1975 is the beginning of our new horizon. It both embodied broad principles of peaceful coexistence and contained important non-binding human rights provisions applicable to the Soviet Union and East European countries among the 35 sovereign signatory countries. From it, dissident and human

rights groups in Russia, Czechoslovakia, Poland and elsewhere were able to invoke legal international human rights instruments as a way of exerting pressure on their respective governments. Soon, the Helsinki Act and its periodic review provided a unique platform for the systematic public exposure, and shaming, of Soviet and East European human rights practices (Chayes and Chayes, 1995; Neier, 2012). And, of course, human rights were taken up as an issue in Western Europe and across the Atlantic.

It was there, in the United States, that the next great shift occurred. The end of the Cold War was to have a major impact in easing the tension between security policy and human rights that had long tainted foreign policy, of the United States in particular. For the United States, throughout the Cold War period the promotion of human rights had been relegated to, or openly subsumed by, anti-Communism. The priorities of containment had provided US policy-makers with the justification to settle for "regimes whose origins and methods would not stand the test of American concepts of democratic procedure" – as a second-best alternative to accommodating "further communist successes" (US diplomat George Kennan, cited in Sikkink, 2004: 41). This line of reasoning had prompted successive US administrations to grant valuable symbolic support and material aid to authoritarian governments. The consequences of this were particularly dramatic in Latin America, where US policies helped prop up authoritarian and military regimes that had interpreted such signals as a green light for outright repression.

The biggest difference between human rights and transitional justice experiences across our two continents had to do precisely with Washington's role. The rise of human rights and transitional justice initiatives in Latin America had been hindered by the divide that long pitted conservatives against liberals on human rights issues within the US Congress. Conservatives had tended to vote on human rights to punish left-wing regimes; liberals had resorted to the human rights cause to expose right-wing dictatorships. In contrast to Eastern Europe, where support for human rights and efforts at Communism containment proved more or less compatible, anti-Communism and support for human rights did not make good bedfellows in Latin America. True, by the mid-1970s a bipartisan human rights foreign policy had begun to take shape, but it was in no way equally felt across continents. In the Western hemisphere (with the brief exception of the Carter administration), at least until the second Reagan administration, the cause of human rights had remained hostage to anti-Communist policies oriented to military and right-wing governments.[3]

The 1980s were marked by the overthrow of national security regimes and the rise of democracy in Latin America. And in 1989 the Berlin Wall came down. These events happened in no small measure because of a

rising wave of democratization and changing international attitudes towards authoritarianism and human rights. Yet an ultimately congruent process was driven by different forces in Eastern Europe and Latin America. In the former case, it was the implosion of the Soviet Union that provided the impetus for democratization. In the latter, democratization was more closely linked to endogenous forces, including the disastrous decision of the Argentine military to go to war with the United Kingdom over the Malvinas, or the protracted process of liberalization that underpinned the transition to democracy in Brazil.

So, although the end of the Cold War had profound consequences for the two regions, the wave spreading transitions to democracy in Latin America preceded the fall of the Berlin Wall. On the other hand, and as iconically represented by figures such as Lech Wałęsa in Poland and Václav Havel and his Charter 77 movement in what was then Czechoslovakia, the protest movement against the Soviet system had a long pedigree too. When 1989 came, the forces that had kept the Communist bloc together were ready for their rapid unravelling.

The fall of the Berlin Wall was the fall of the Cold War's ideological barriers. From 1989 to 2001, superpower security policies eased up to a remarkable degree. Human rights norms and standards, supported by a plethora of activist organizations and in accord with Washington's foreign policy objectives, held sway. Further reinforcement would soon come with the application of the European Union's conditionality policies for the 10 Central and East European countries that were to successfully seek membership. The age belonged to democracy and human rights. The magnitude of human rights violations in the recent past made the recent past look like an aberration for which correction could be made. Violations would meet the demand for accountability; a new normative context would make absolute impunity abhorrent.

The twentieth century closed with two key developments that sealed this new international age for human rights. In 1998, the Rome Statute was opened for signature; this was the treaty that created the International Criminal Court (ICC). Also in 1998, General Augusto Pinochet, former President of Chile, was arrested in London on charges of torture and other serious human rights violations. The establishment of the ICC and the arrest of Pinochet signalled the arrival of new international standards. Those alleged to be responsible for serious human rights violations could find no international refuge from accountability. The world had changed, unimaginably.

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And so it had. Yet the story was also more uncertain than one of the inevitable triumph over evil. Expectations of that triumph would often be dashed.

To begin with, the effects of the end of the Cold War were not evenly distributed. In some places – most tragically the former Yugoslavia and Central Europe – they were accompanied by the unleashing of brutal inter-state conflict. The savage internal wars of Bosnia and Herzegovina also found some equivalence in Colombia and Guatemala. In these latter two countries, political "transition" occurred, but in tandem with vertiginous disintegration, state weakness and extraordinary levels of violence.

Here were the hardest of all cases for transitional justice and, as such, they loom large in this book. In essence, they presented transitional justice's tragic *agon*: how could truth and justice be satisfied if the justice sector remained captured by perpetrators of human rights violations? The course of local justice in the small country of Guatemala was to remain blocked despite President Bill Clinton's apology there in 1999, despite the findings of two groundbreaking Truth Commission reports, despite the evidence made public in 2005 upon the accidental discovery of the archives of the National Police, and despite the bold arrest warrants and extradition requests issued by the Spanish justice system.[4]

Guatemala was an extreme, but not isolated, case. Similar to Romania, it suggested the bleakest of conclusions, namely that where the rule of terror had extended its grasp over a whole society, the chances of an effective pursuit of justice were minimal. As is often the case in small countries, in Guatemala "big" politics and even bigger intelligence apparatuses have persistently obstructed the cause of justice (Goldman, 2007: 140). Now, some 25 years after the transition to democracy, electoral candidacy is still considered by many suspected perpetrators as the best route to secure immunity from prosecution. Although 13 prosecutions in relation to physical integrity rights were registered in Guatemala in the period 1988–2003, systematic intimidation and death threats against victims, judges and prosecutors successfully perverted the course of justice. The majority of the cases of transitional justice closed down.

Yet there was an affront here that could not be allowed to pass either, and again Guatemala was not alone. Where national human rights groups were unable to influence domestic political conditions, international formulas would be applied. In Guatemala's case, this led to the government's negotiation with the United Nations for the creation of an International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala, CICIG).[5] In Bosnia and Herzegovina (BiH), where national capacities also remained far from adequate, between 1995 and 2002 the internationalization of justice fell to the International Criminal Tribunal for the former Yugoslavia (ICTY).[6]

These were different forms of international intervention and they served different purposes, yet the internationalization of justice is a clear feature of the transitional justice enterprise. A product of the new

international sway of human rights, the belief that external pressure could have a serious impact on domestic justice systems and help lift the barriers to accountability eventually coalesced around the concept of *complementarity* enshrined by the Rome Statute. The concept spoke for the ambiguities of the new age.[7] Was the purpose of the ICC to supersede domestic court systems? No, its goal was to reinforce and guide domestic efforts at accountability for past human rights violations. Yes, its role was to trigger the reach-out to regional, foreign and ultimately international courts when national justice systems lacked the capacity or the political will to prosecute serious human rights crimes.

Not all of the ambiguity was disabling, by any means. Where governments proved responsive and domestic courts willing and able to rein in impunity, complementarity would most likely succeed. The "Pinochet effect" and its role as the catalyst of both a chain of human rights prosecutions in domestic courts in Chile and a leap in foreign prosecutions illustrate very vividly what complementarity was meant to achieve.

In other situations, though, internationalized transitional justice was an unsatisfactory default option. The jury remains out on whether international prosecutions helped the cause of justice and social peace in BiH, for example.

Yet ambiguity is not the same as contradiction. The temporary internationalization of justice may well prove highly germane to the eventual success of domestic courts and local institutions. Indeed, the prospects for complementarity in BiH are not necessarily discouraging. The changes associated with the Completion Strategy adopted by the ICTY in 2002 and a number of judicial reform initiatives were very much prompted by the recognition that domestic prosecutions would help bolster the rule of law and make justice less abstract for the population.[8]

Students of international relations will be unsurprised to learn, however, that the internationalization of an issue as sensitive as transitional justice is tricky. As Lavinia Stan highlights in Chapter 15 in this volume, in Eastern Europe international pressures in fact at first privileged the crimes of the Nazi era over the human rights offences committed during the Communist period. It was only in 1996 that the Council of Europe, in Resolution 1096, called on Central and East European countries to dismantle the legacy of the former Communist totalitarian systems.

This has been easier said than done for their transitional justice efforts. Discovering the truth about the oppressive past of nightmarish Big Brother societies in Slovakia, Romania or Poland where party-state structures penetrated so many aspects of political, social, economic and cultural life has involved weighing how much of their populations ought to be liable for the charge of collaboration. Then, too, transitional justice has been manipulated to disqualify political opponents. This was a particularly acute trend in Romania, but also significantly disruptive in Poland. In many instances, the instrumentalization of transitional justice initiatives produced quasi-legalized vengeance and witch hunts. To the extent to which "lustration" policies excluded numerous actors from the political process, it could be argued that they ended up encouraging anti-democratic trends in these societies.

The specific legacy of Communist rule provides, then, a central contrast between East European and Latin American experiences of transitional justice.[9] Transitional justice gravitated in Eastern Europe around the issue of state and party collaboration; in Latin America, most prominently in Argentina and El Salvador, around the need to exclude from the armed branch of the state and the justice sector those officials and agents who had committed human rights crimes.[10] The criteria that guided such reforms were almost exclusively restricted to grave human rights crimes.

Such divergence brings home the ineluctable relativism within the universality of human rights: "crimes against humanity" are also injustices against societies, and societies are always different. Yet we find a commonality here too. Whether in Eastern Europe or in Latin America, the crucial variables of success or failure have been the public's appetite for, or apathy towards, transitional justice. In some cases, most notably Argentina and East Germany, bottom-up processes, involving the active engagement of local actors and locally generated pressures, had a direct impact in boosting the domestic demand for truth and justice.

In other experiences, however, top-down processes, driven by the changes in international criminal justice and the shift towards individual criminal accountability, had a clear impact in laying the foundations for the gradual emergence of an incipient domestic accountability structure for human rights. Clearly, international actors and institutions can play a pivotal role but the longer-term prospects for human rights will remain tightly linked to developments and implementation at the national level.

In a variety of experiences examined in this volume, but most clearly in Argentina and East Germany, the boundaries of accountability were effectively widened through a creative and dynamic interaction between efforts deployed at the local level and those pursued in the regional and international arenas. In many instances, victims, relatives and human rights lawyers removed obstacles to the course of justice at home by resorting to judicial systems in other countries. As courts in Spain, France and Italy learned about serious human rights cases – involving citizens with dual nationality or cases in which universal jurisdiction could be established – vigorous "intermestic" processes were set in motion. In a number of cases, not only did such trends spark heated debates about

human rights law and international law and their relation to national laws; they also helped activate national justice systems. This trend has become particularly visible in Latin America, the region that accounts for 55 per cent of all domestic human rights prosecutions, but also in Africa, a region that concentrates 22 per cent of total prosecutions (Sikkink, 2011: 22–23). In turn, Europe as a whole accounts for 14 per cent of human rights trials in domestic courts. This suggests that accountability mechanisms *can* catalyse enabling conditions for the development of a more resilient human rights culture and also for the strengthening of democratic state institutions.

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In Chapter 2, Kathryn Sikkink offers a particularly helpful theoretical examination of three models of accountability that are prevalent in the world today. Her analysis depicts a gradual and hard-won evolution from sovereign immunity or "impunity", to state accountability, to the more recent rise of the individual criminal accountability model. In considering the drawbacks and merits of these models, Sikkink provides an analysis of the effectiveness of accountability mechanisms in terms of their longer-term contribution to reducing human rights violations and/or consolidating democracy. Her findings point to two main conclusions: first, the rise of individual accountability across regions, via an increase in human rights prosecutions; secondly, an apparent correlation between human rights trials, human rights protection and democratic consolidation.

Complementing Sikkink's analysis, Pilar Domingo delves into the linkages between the rule of law, accountability and transitional justice. The existing literature has focused on transitional justice experiences and rule of law reform as parallel and separate forces, but Domingo argues that the two are highly connected and mutually enforcing processes. In establishing her thesis, she considers how previous and current accountability relates to the evolution of the rule of law in Latin American states over the past two decades. She also provides an interesting insight into how individuals involved in the judicial process, such as judges, are influenced by the interpretation of judicial norms at an international level, and how this has an impact on judicial processes domestically. Although identifying regional trends in transitional justice across Latin America is an important task, Domingo is careful to underline the importance of taking into account specific local contexts and legal cultures.

The justice and reconciliation processes in different countries have been diverse and have been met with different degrees of acceptance: some were successful but others left the victims' trauma at best half-relieved. No two transitional justice initiatives are identical and each new endeavour yields a fresh set of lessons. The argumentation of Chapters 2 and 3 can be cross-referenced from the seven Latin American case studies. These commence in Chapter 4 with Catalina Smulovitz's examination of accountability and justice in Argentina. In her detailed analysis, Smulovitz highlights the many challenges faced by civilian authorities and human rights activists as they sought to push forward the boundaries of accountability for past human rights violations. In Argentina, a country that has been characterized as a precedent-setter and a "global leader in transitional justice", not only were human rights issues inbuilt in the dynamics of democratization; the many setbacks encountered by the human rights movement were also repeatedly met with creative and innovative action, testifying to the remarkable resilience of human rights activists in this country. Smulovitz draws conclusions by considering how the diverse formal and informal "justice outcomes" that transpired in Argentina interacted with each other and contributed to the ongoing task of establishing a new democracy that respects human rights.

Further demonstrating the diversity of experiences in Latin America, in Chapter 5 James L. Cavallaro and Fernando Delgado assess how Brazil "lagged behind" in redressing the human rights violations of its past. They coincide with other experts in attributing insufficient progress to a variety of factors, including the cultural legacy of slavery, the top-down nature of Brazil's transition to democratic rule and the relatively low numbers of people considered to be victims of state-sponsored violence (at least in comparison with neighbouring countries). What is clear is that the record of transitional justice in Brazil and the relative lack of transnational accountability pressures sharply contrast with the Argentine experience. Although the two countries are now considered fairly consolidated democracies, Cavallaro and Delgado suggest a causal link between failing accountability in previous generations and imperfect support for Brazilian democracy in the current generation. The authors provide an interesting argument in linking transitional justice issues with contemporary Brazilian attitudes to crime. They ask the question of how, paradoxically, the Brazilian public can be so opposed to the military dictatorship yet more tolerant of state-sponsored human rights abuses committed in the name of social order.

Chapter 6 on Chile also attempts to explain the contradictions entailed in another country's experience related to historical human rights violations. Claudio Fuentes finds out why, despite the obstacles to the pursuit of justice thrown up by the amnesty arrangements that characterized the transition from the Pinochet military regime to democracy, Chile was able to institute so many important steps towards truth and justice, including the indictment of close to 500 active and former military and police officers. Fuentes revises the prevailing thesis that General Pinochet's visit to London in 1998 was the catalyst for this transformation. Rather,

he argues, changes in the behaviour of key actors – from governments to conservative forces, social actors and the judiciary – and a shifting balance of political power allowed a more pro-justice environment to develop. Fuentes concludes by highlighting the key lessons to be learned from the Chilean experience.

In stark contrast to the progress being made in Argentina and Chile, Elvira María Restrepo describes the transitional justice experience in Colombia as "one of the tardiest in Latin America". In Chapter 7, she explores the contested demobilization of right-wing paramilitaries and its tortuous evolution towards a *sui generis* transitional justice process. As Restrepo makes clear, not only were the 2005 Justice and Peace Law and the Constitutional Court rulings from 2006 the first Colombian initiatives to experiment with transitional justice, but these took place in a context dominated by the violence associated with illicit drug-trafficking. Although certainly aware of the imperfections of this enterprise, Restrepo argues that paramilitary demobilization and official exposure of atrocious crimes have produced some benefits, including the ability of victims to seek justice and overall improved chances for sustainable peace. Yet Restrepo closes her chapter by pointing to the main shortcomings of this transitional justice effort and to the clash between the executive branch of power and the judiciary. Indeed, whereas the executive sought to re-establish stability through demobilization and limited criminal liability, the justice system reached out to accountability for serious human rights violations to assert its share of state power.

Chapter 8 focuses on El Salvador's pending account with its past. Ricardo Córdova Macías and Nayelly Loya Marín chart the country's transitional experience from war to peace, from militarism to demilitarization, and from authoritarianism to democracy. Based on a broad conceptualization of transitional justice, they explore the interactions between security sector reform and mechanisms of transitional justice, and how these dynamics affect the process of democracy-building. They find that, although the peace process and the Truth Commission of the 1990s have contributed to the institutionalization of electoral democracy and the observance of human rights, much has yet to be achieved, especially in terms of acknowledging the role of the state and bringing state actors of the time to account for their atrocities. The authors highlight the importance of the bold move taken in 2010 by President Mauricio Funes in acknowledging the atrocities committed by state and parastatal security forces in El Salvador.

Like El Salvador, neighbouring Guatemala has made a "double transition", from authoritarian rule to democracy and from armed conflict to peace, since its long-running internal conflict ended in 1996. In Chapter 9, Carmen Rosa de León Escribano and María Patricia González Chávez

analyse the effectiveness, or lack thereof, of the country's transitional justice mechanisms. In line with Sikkink's argument, the authors identify the links between accountability for past human rights violations and developments in democratic processes and institutions. By focusing on the existence and effectiveness of these mechanisms, they provide a critical assessment of the quality of democracy in Guatemala. As they remind us, the active involvement of international actors, including the United Nations through the International Commission Against Impunity in Guatemala, has not radically altered the balance of power that has long perpetuated impunity for serious human rights violations in this Central American republic.

In Chapter 10, the final Latin American case study, Carlos Basombrío Iglesias investigates the transitional justice and democratic consolidation processes in Peru. His objective is to consider recent Peruvian history in terms of the complete range of transitional justice mechanisms that can be implemented, and the extent to which they recognize victims and promote peace, reconciliation and democracy. Iglesias focuses on what he calls "the backbone" of Peru's transitional justice process: the country's Truth and Reconciliation Commission, the prosecution of human rights violations, the trial of former President Alberto Fujimori, and security sector reform. His central contentions are twofold: first, that, despite the tremendous work that still needs to be done, transitional justice initiatives to date have had a huge positive effect on moulding democracy in Peru; and, secondly, that the chances of future transitional justice mechanisms succeeding will depend heavily on how successful democratic consolidation continues to be.

While the Latin American case studies often combine transition from military rule to democracy with a movement from armed conflict to peace, in Eastern Europe the former transition applies in almost all the cases included in this book. The one exception is in BiH, where, despite being better positioned than most states to make the transition from Communism to democracy according to Ernesto Kiza, the country failed to deal with its complex multi-ethnic legacy and descended into conflict. In Chapter 11, Kiza addresses the unique circumstances in BiH where judicial accountability for war crimes was implemented. Although BiH is lauded internationally for its success in indicting high-ranking individuals for war crimes, Kiza points out how proposals to provide reparations or establish a truth and reconciliation commission were long ignored, and that this contributed to continuing mistrust in the society. Kiza analyses these issues as part of the interactions between judicial concepts and processes at both the regional and international levels. He concludes by identifying the lessons learned from this collective experience, namely that, although international recognition and support for transitional

justice are imperative, ultimately it is up to the society itself to forge a sustainable path to peace.

In Bulgaria, as in most East European countries, transitional justice relates to the transition to democracy since the fall of the Berlin Wall in 1989. In Chapter 12, Hristo Hristov and Alexander Kashumov write about the challenges surrounding responsibility relating to human rights violations committed under the Communist regime. They highlight the importance of knowing what violations took place and for what reasons, with a special focus on disclosure of documentation from the old secret services. They also look at how effective the judicial system has been in assigning accountability for criminal offences committed under the Communist regime. The authors consider these issues in terms of both the country's unique features as well as the broader Central and East European context.

Chapter 13 on transitional justice in East Germany focuses comprehensively on the various instruments used to address East German injustices. These include: rehabilitation and restitution measures for victims of the regime of the Sozialistische Einheitspartei Deutschlands (SED – Socialist Unity Party of Germany); the establishment of an archive for the files of the former secret service (the "Stasi"); "purging" the East German civil service; and the employment of an Enquete Commission. Gerhard Werle and Moritz Vormbaum make the case that transitional justice mechanisms were overwhelmingly just and effective in dealing with East German state criminality. However, they also argue that legal instruments can provide only part of a solution that allows a society to come to terms with its past and that greater efforts could be made to ensure the past is not simply "filed away and forgotten".

In Chapter 14, Monika Nalepa looks at the extent to which lustration – which she defines as "revealing links to the former [Communist] secret police of persons running for or holding public office" – is an effective trust-building transitional justice mechanism. The problem she addresses is the distrust of state institutions and political elites upon Poland's emergence from Communist rule. Although Nalepa believes that lustration, normatively, is the best response to this lack of trust, she argues that it has been co-opted as a tool by political elites to manipulate the democratic process. Unsurprisingly, in her analysis of lustration and other transitional justice mechanisms implemented in Poland, she is critical of their combined performance.

In her evaluation of transitional justice in Romania, Lavinia Stan focuses on how initiatives including trials and truth commissions, among other proposals, have been "systematically blocked by the political elite". Chapter 15 suggests that Romania continues to require a belated reckoning with its past. Delays in addressing the past have led to suboptimal outcomes for surviving victims, and information has become less reliable with the passing of time. As part of her analysis, Stan looks at how a range of actors, including the Romanian public, the victims themselves and former perpetrators, have responded to these circumstances.

Chapter 16 examines the approach taken by Slovakia after the 1989 "Velvet Revolution", which differs from that in most other East European countries. Nadya Nedelsky illustrates how the country's strategy of forgiveness and forgetting persisted until 2004, after which information about the former secret service was published, stimulating a more vigorous discussion about the past. She analyses why various leaders opted for different strategies at differing stages, and records how effective they were in achieving both their own original aspirations and those of transitional justice advocates. In cataloguing the lessons to be learned from the Slovakian case, focusing on how differing leadership types produce differing outcomes, Nadelsky takes into account the role of national, regional and international political actors.

Chapter 17 presents the final case study, that of the former Yugoslavian state and now independent nation-state of Slovenia. As in other East European countries, the post-Communist era has witnessed attempts to implement restitution measures to address the human rights violations of the Communist era. However, despite efforts to compensate victims in Slovenia, Mitja Steinbacher, Matjaž Steinbacher and Matej Steinbacher find that the restitution process was based on achieving an acceptable truth by consensus, rather than on achieving real truth and justice. After assessing the outcomes of the country's failure to investigate and assign responsibility for widespread abuses, the authors make the case that, for transitional justice processes to be effective, perpetrators must be brought to justice.

In Chapter 18, Alexandra Barahona de Brito and Laurence Whitehead essay a reframing of the debate on transitional justice by drawing from both empirical and normative knowledge. Reflecting the wide ranges of experiences in Latin America and Eastern Europe, they contend that there is no single model of transitional justice that can be applied universally to countries that have made the transition to democracy in recent decades. They illustrate how contemporary experiences of transitional justice have to be understood in terms of the political motivations behind their implementation, which can have the result of either entrenching or stifling the values of democracy. The authors also shine a light on what they call some of the "overly abstract and excessively normative approaches to the topic", a tendency that this volume as a whole also aims to correct.

In Chapter 19 Mónica Serrano outlines what this large set of country experiences tells us about the conditions under which democratization and transitional justice, so often taken to be antagonists, can in fact be reconciled. Finally, in Chapter 20, Vesselin Popovski addresses both the complexity and the effectiveness of transitional justice across our two continents.

Notes

1. Following the return to democratic rule, trials in Greece, whether for treason or human rights violations, were initiated by private citizens. Although lawyers relied on private prosecution provisions against abuse of power and bodily harm, the Karamanlis government signalled its support for justice. Moreover, the government's emphasis on due process and its decision to commute the death penalty to life imprisonment created the conditions for the first modern human rights trials. Trials were also conducted in Portugal against officials of the much-hated political police, PIDE, which between 1945 and 1973 had held 12,000 prisoners. The pursuit of justice in Portugal was marred by controversy. Some called for the extermination of PIDE and its members. In other quarters the process was perceived as an exercise in appeasement rather than accountability (Sikkink, 2011).
2. In its 1974 report on Chile, as in its subsequent reports again on Chile in 1977, on El Salvador and Haiti in 1979, and on Argentina in 1980, the Inter-American Commission on Human Rights consistently advocated the prosecution and punishment of perpetrators. There is still a widespread perception that the International Criminal Court was solely born out of the tragic conflict in the former Yugoslavia. This is erroneous. In Latin America, although dictators still represented the norm, a visionary minority was able to predict that the day of reckoning for those dictators would not be far off. The global amnesia about Latin America's role in setting the course for transitional justice and individual criminal accountability is one of the deficiencies that this book aims to correct (Sikkink, 2011: 66–67).
3. One of the two main Congressional groups was led by Henry Jackson, and revolved around the ex-Soviet Union and Eastern bloc countries. The other group included figures such as Edward Kennedy, Frank Church, Donald Fraser and Tom Harkin. By focusing on right-wing authoritarian regimes this group often clashed with those within the US foreign policy establishment who saw these regimes as a bulwark against Communism. With the publication of the report *Human Rights in the World Community: A Call for US Leadership* in 1974 (US Congress, House Committee on Foreign Affairs, 1974) a more general human rights vision within the US Congress began to emerge. See Sikkink (2011: 52–53), Carothers (1991: section on "Democracy by Transition in El Salvador" and Chapter 4, "Democracy by Applause") and Neier (2012: 14).
4. In that year President Clinton visited Guatemala and explicitly said: "it is important that I state clearly that support for military forces or intelligence units which engaged in violent and widespread repression of the kind described in the [Inter-Diocesan Project for the Recovery of Historical Memory] report was wrong ... and the United States must not repeat that mistake" (cited in Goldman, 2007: 155). Clinton's apology has been perceived in different ways: whereas Goldman describes it as extraordinary, Stephen Schlesinger (2011) found it rather vague.
5. In September 2007, UN Secretary-General Ban Ki-moon appointed Carlos Castresana, a Spanish judge, to lead the CICIG. The resignation of Castresana in 2010 over the alleged reluctance of the Guatemalan government to cooperate in support of justice led to the appointment of Francisco Dall'Anese Ruiz, ex-General Prosecutor from Costa Rica. Although human rights were a leading consideration in the process of establishing the CICIG, its agenda has mostly been designed to unveil and dismantle the clandestine networks that are embedded in the state apparatus and that are perceived in some quarters as being protected by agents of the state. It is not a special tribunal, in that it relies on and uses the country's criminal code and established judicial proceedings. See Goldman (2007: 368), *El Financiero* (2010) and Vela (forthcoming).
6. The evaluation system adopted by the ICTY in 1996 established strict rules for national and local prosecutions. Under the terms of this system, no war crime prosecutions were to be conducted without the ICTY's prior authorization.
7. As Ernesto Kiza makes clear in his contribution to this volume (Chapter 11), the adoption of the Completion Strategy by the ICTY in 2002 followed the logic of complementarity. This strategy sought to bolster the development of national justice capacity and thus to balance the internationalization of prosecutions.
8. As Kiza also points out, these changes led in 2005 to the creation of a War Crimes Chamber (exclusively responsible for high-profile cases) and the establishment of the Court of Bosnia and Herzegovina, which is also the highest authority regarding organized crime, economic crime and corruption. The trends that at one point led BiH to dominate the bulk of indictments for serious violations of international humanitarian law (almost 80 per cent of a total of 161 indictments) at the ICTY may gradually change as a result both of these changes and of pacification and stabilization after war.
9. Transitional justice in Eastern Europe differed in at least one other respect from experiences in Latin America. Communist rule in Central and Eastern Europe was accompanied by large-scale property expropriations and nationalization. Not surprisingly, then, demands for property restitution accompanied transitions to democracy in various Central and East European countries, including Bulgaria, East Germany, Poland and Slovenia. Although many of these countries considered property restitution, privatization proved hugely problematic. Thus in Poland, Wałęsa's offer to transfer state enterprises to workers prompted property owners to reactivate pre-1945 claims. Not before long, state authorities in Poland were confronted with mounting national and international property claims. Similar considerations led the German authorities to settle disputes over property claims according to the public interest.
10. At times, the logic of lustration simply clashed with the goal of justice for serious human rights violations. As described by Monika Nalepa in Chapter 14 in this volume, in Poland a number of members of Solidarity who had been shamed as collaborators were the key witnesses who made possible the identification of the commander responsible for the shoot-to-kill order during the 1980 miners' strike in which 15 miners lost their lives.

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