The Costs of Justice

How New Leaders Respond to Previous Rights Abuses

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Introduction

What Is Transitional Justice and Why Should We Care?

The dramatic end of the Cold War in the late 1980s marked a fascinating twist in the study of transitional justice, those responses to a former regime’s repressive acts following a change in political systems. First, the death of ideological bipolarity allowed for the creation of new norms and the strengthening of older but long-ignored ones with regard to justice. Countries emerging from dictatorships in the last period of the “third wave” were no longer so constrained in their internal decisions by the broader geopolitical factors that had dogged their predecessors. Second, the sheer scale of communism’s collapse led to an unprecedented number of states—more than two dozen—suddenly faced with accounting for decades of dictatorship. Third, the trajectories of these postcommunist states demonstrated the tentativeness of democratization, upon which transitional justice is ostensibly based. While some postcommunist states immediately lurched in the direction of free-market democracies, other nominally new democracies (that is, those where members of the old regime continued to rule, claiming to be on a new political trajectory) clamped down rather than let up on opposition, and still other states disintegrated into bloody regional and civil wars that further complicated any reckoning with the past.
This book, based largely on elite interviews and media analyses conducted in the four postcommunist countries of Poland, Serbia, Croatia, and Uzbekistan, draws on the experiences of a diverse group of states from one of the most monumental political transitions in recent history in order to explore a fundamental question: What determines how a (nominally) new regime will pursue transitional justice following a period of repression? This question is an important component of the broader democratization discourse. Yet at a time when the U.S. government spends hundreds of millions of dollars annually to promote democratization and human rights accountability around the world, we know relatively little about how to shape the desired outcome. The American-backed trial of Saddam Hussein in 2005–2006, largely criticized as a miscarriage of justice and an inspiration for Sunni insurgents in Iraq, highlights the weight of this dilemma.

The Saddam Hussein trial is also a reminder of the staying power of transitional justice. Scarcely a day passes before another story appears in the national press about commemorations for victims of injustice, a truth commission’s newest findings, or the next ex-dictator standing trial. At a time of momentous international challenges, from global warming and pervasive hunger to terrorism and war, this attention is not frivolous, but rather a sign of the times. A glance at the U.S. State Department’s Web site is enough to realize that dialogue concerning transitional justice has reached a new level. The primary U.S. foreign policy body identifies among its human rights objectives the need to “promote the rule of law, seek accountability, and change cultures of impunity.” To back up these words, the Office of War Crimes Issues has been established to pressure states to ensure criminal justice for their worst offenders. The State Department’s Bureau of Diplomatic Security, in turn, offers bounties for war criminals. The U.S. government’s $5 million reward for the (recently captured) former Bosnian Serb president, Radovan Karadžić, is equal to that paid for many terrorists on the very same site.

Cynics might still question the determination of U.S. officials who profess to care about transitional justice, particularly given lingering questions concerning how and why it fits into the “national interest.” Yet official U.S. positions in this sphere are symptomatic of a more global phenomenon. The international community is increasingly speaking out on the need to address past abuses. While intergovernmental bodies have always been somewhat equivocal about the need for justice versus peace, the
United Nations (UN) and the Intra-American Commission on Human Rights (IACHR), in particular, have condemned impunity and begun to view domestic amnesties as inconsistent with international human rights norms and laws. The Cold War’s explosive end resulted in the first international tribunal since Nuremberg and Tokyo: the International Criminal Tribunal for the Former Yugoslavia (1993), which was quickly followed by the International Criminal Tribunal for Rwanda (1994). Since then, the United Nations has taken an active role in establishing and supporting other criminal trials in East Timor (2000), Sierra Leone (2002), and Cambodia (2003). This process culminated in the recent establishment of the International Criminal Court, designed in part to encourage and enable criminal accountability for the world’s worst violators.

This trend is also evidenced by local courts’ ever-increasing attempts to try crimes that took place at home or on foreign soil. This might involve stripping local rights abusers from the old regime of self-granted immunity and pursuing criminal cases against them in courts on the terrain that they once controlled. It also includes a concept called “universal jurisdiction,” which enables (or may even, at least in principle, require) states to pursue criminal cases for certain crimes, no matter where or against whom they were committed. The term was initially coined in 1945, based on the understanding that war crimes were “offenses against the conscience of the civilized world, and every nation therefore had an interest in their punishment.” Since then, it has been expanded by international bodies such as the UN’s advisory International Law Commission, which in 1996 confirmed universal jurisdiction’s applicability to war crimes as well as to genocide, crimes against humanity, torture, and crimes against the United Nations or UN personnel.

Domestic courts have begun prosecutions in defense of the international legal order in an increasing number of countries, including (but not limited to) the United States, Italy, France, Senegal, Switzerland, Sweden, England, Belgium, Luxemburg, Denmark, Ecuador, New Zealand, Israel, the Netherlands, and Spain. The Spanish demand for the extradition of former Chilean dictator Augusto Pinochet represented a dramatic application of universal jurisdiction. While Pinochet never actually stood trial because of his deteriorating health, Spanish courts arguably brought justice to a new level, even in opposition to their own government, which
was seemingly more concerned with maintaining friendly diplomatic relations with their unsupportive Chilean counterparts. Punishment for past crimes has become increasingly ensconced in customary law. As former UN Secretary General Kofi Annan declared in his 2004 report, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” justice now means “the prevention and punishment of wrongs.”

Transitional justice has thus returned to the international agenda with a zeal not seen since Nuremberg. Yet even as the field of transitional justice blossoms, the very term remains only vaguely defined in the literature. Most broadly, the International Center for Transitional Justice generically defines it as “a response to systematic or widespread violations of human rights.” Jon Elster, in an invaluable contribution to the field, refers to transitional justice in his abstract as “retribution and reparation after a change of political regime,” and then in his opening pages as “the processes of trials, purges, and reparations that take place after the transition from one political regime to another.” While Elster places justice on a continuum ranging from legal justice to political justice, others, such as Ruti T eitel, define transitional justice more exclusively as “legal responses” to past wrongdoings during periods of political change.

In this book, I define transitional justice as a new or nominally new regime’s legal and symbolic responses to past human rights violations. By legal responses, I mean restorative and retributive forms of individual accountability for past abuses, such as compensation (aimed at concrete victims of repression) and criminal trials (for individual perpetrators). By contrast, I characterize symbolic responses as those that entail a broader, less personal form of address, such as condemnations or apologies, which emphasize a moral attack on the past without necessarily affecting particular individuals. In practice, the lines between restorative and retributive or legal and symbolic are frequently unclear. Take, for example, rehabilitation of a former victim. This can be seen as a legal, restorative act with practical ramifications, since clearing the victim of alleged crimes may be a precondition to regaining certain civil or economic rights, such as a pension. At the same time, it can also be seen as a symbolic, retributive intervention, an indirect attack on the former system and a potentially humiliating repudiation of those involved. In this book, I focus on seven frequently utilized types of transitional justice, discussed in detail in chapter 2.
My inclusion of “new or nominally new regime” in this definition is a deliberate attempt to broaden our understanding of transitional justice in practice. There is a tendency in the literature to assume that transitional justice measures occur in the context of a complete (or at least intended) transition from nondemocratic rule to democracy.15 This is perhaps not surprising given the plethora of normative arguments for justice in the literature. But even broad studies assessing cynical reasons for justice, such as populism, revenge, and narrowing the political playing field, also tend to assume that a new, democratically oriented leadership has taken power.16 While the fact that repressive leaderships also engage in transitional justice has been acknowledged with a surprising degree of disinterest, I believe that these cases can actually help us to understand broader motivations and determinants of justice.17 For this reason I include the case of Uzbekistan (chapter 8), governed by a nominally new regime, in this study.

DETERMINANTS OF JUSTICE

Although there is a rich, interdisciplinary literature that addresses the value of various transitional justice mechanisms, theoretical arguments concerning conditions under which we should expect to see specific measures implemented are limited. The existing literature, born as oppressive regimes from Latin America to Eastern Europe fell in the 1970s, 1980s, and 1990s, has quickly become dated. While this literature is quite vast and varied with respect to the independent variables responsible for the employment of justice mechanisms, a common thread running through most of these arguments is power-based constraints. The degree to which new elites are able to impose harsh methods of justice, the argument goes, is largely a function of their strength relative to that of the outgoing regime. The logic of the argument is intuitively appealing; it is easier to imagine Vladimir Lenin holding the head of deposed tsar Nicholas II than Boris Yeltsin holding that of Mikhail Gorbachev.

Clearly, a new regime’s formal power structure, perhaps impacted by the transition process itself, will have at least some effect on new elites’ justice policies. This approach, however, may be overly focused on short-term
outcomes and too fixated on the domestic stage. Relative power arguments provide a useful framework for elucidating some constraints encountered by new elites faced with transitional justice, but such theories discount internal and external incentive structures that may strengthen or weaken the overall effect of this variable. By pitting old versus new elites, relative power arguments in many ways ignore the realities of governing in a democratic state where leaders are held accountable to today’s electoral constituency. While attitudes toward transitional justice may vary, the provision of core political goods and services, defined here as economic or security policies that produce tangible change, is essential to a ruling elite’s political viability. But how does the provision of core political goods and services relate to the process of transitional justice?

In this book, I argue that a new regime’s will to pursue transitional justice is closely linked to its capacity to provide these political goods and services, and that institutional variation plays an important role in determining how this process plays out. The mechanisms employed by new elites to enhance their long-term political viability should, according to this “strategic argument,” depend on their institutional constraints. While those in constitutionally weak institutions may or may not support a given justice policy based on private preferences or on the overall popularity of the measure, those in constitutionally powerful institutions should be focused particularly on how justice (and a range of other policies) affects their bottom line—their ability to provide those political goods and services that constituents expect from them. This is in some ways a more nuanced application of Graham Allison’s bureaucratic model, according to which “where they stand depends on where they sit.” Rather than simply pitting new elites against their predecessors, transitional justice may split new elites along institutionally defined lines.

This study builds upon numerous others that have examined why and how new political leaders pursue transitional justice. It differs from those studies in two important respects. First, I challenge the conventional view that justice is primarily a function of power. Instead, I explain the pursuit of justice as inextricable from a broader political framework where leaders eager to maintain their positions continually have one eye on their constituents. Justice policy is not, however, defined merely by popularity. In fact, political elites might pursue highly unpopular justice policies that
they personally favor. But the path they choose will be shaped by the degree to which rulers believe that their constituents perceive that these policies will either endanger or enhance the delivery of bread-and-butter goods and services that politicians are charged with overseeing.

Second, this book includes new empirical evidence from four postcommunist states coping with various aspects of justice: Poland, Serbia, Croatia, and Uzbekistan. These cases provide readers with a new understanding of how states with such diversity—in terms of everything from political system and geography to religion and culture—confront fundamentally similar questions. Based on more than 250 interviews with actors key to policy debates, coupled with an analysis of thousands of international and local media reports from these countries, I offer an in-depth look at one of the most contentious and enduring political issues in the postcommunist world. In countries where everyone was touched in some way by the repressive apparatus of the state, this book relates how political leaders charged with resolving the question of how to deal with past rights violations and violators made the choices they did.

**ORGANIZATION**

This book is divided into two parts. In the first part, beginning with chapter 1, I examine theoretical arguments in the literature and expand on the strategic argument proposed. Chapters 2 and 3 are primarily methodological. In chapter 2, I propose a tool to assess transitional justice theories and discuss how this study was carried out. More specifically, I explain the development and use of a “transitional justice spectrum” based on a hierarchical arrangement of possible justice mechanisms and designed to allow researchers to conduct more rigorous, cross-national tests of justice arguments. In chapter 3, I discuss the specific nature of crime and punishment in postcommunist states, including an overview of lustration there. In chapter 4, I provide a broad methodological overview, including case selection, data collection, and method of analysis.

The second part of this book is composed of four country chapters (5–8), in which I analyze the path of justice in Poland, Serbia and Montenegro, Croatia, and Uzbekistan, and chapters 9 and 10, in which I pursue
cross-national lessons. My first country study, Poland, is in many ways the quintessential Central European case, where the worst years of repression ended in the 1950s and where the communists ultimately negotiated power away to the Solidarity opposition group. In this chapter, I explore how and why Poland’s new elites successfully pressed for criminal and other measures of justice, despite their apparent weakenss. I find that most new elites approached the past with little concern about direct reactions from communists and their associates, but with much trepidation over public perceptions that they concentrated too much on “political games” and not enough on economic reform.

In chapter 6, I use my second country study, Serbia and Montenegro, to introduce a case characterized by multiple periods of repression, the last and most violent one involving victims primarily regarded by the public as enemies. How do pro-justice leaders from the former opposition movement balance external demands for justice with internal pressures against it? I find that elites in Serbia and Montenegro have pursued harsh forms of justice—namely, cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY)—when they calculated that these measures, exchanged for Western-conditioned aid, might ultimately enhance their political positions.

The same chapter raises the question of whether, without Western incentives, these leaders would have nevertheless moved against old elites, as they say they would have, in the form of less controversial domestic trials. In chapter 7, I look at factors that led Croatia’s new elites to pursue justice under circumstances very similar to their counterparts in Serbia, differentiated primarily by the extent and types of Western pressure for ICTY cooperation. I find that Croatia’s new elites, not subject to the Western-conditioned aid necessary to buy off their constituents, resisted unpopular ICTY extraditions despite elites’ private preferences in favor of cooperation. Instead, they launched a small number of domestic trials intended to placate international actors without stepping on the toes of local voters.

Unlike the previous chapters, the case of Uzbekistan in chapter 8 demonstrates how even where old elites continue to dominate the new system, they may use transitional justice to redefine history in a way intended to vindicate both their past and present use of repression, and thus ensure for their regime the provision of external, otherwise unavailable goods. In this

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chapter, I also analyze the motivations behind President Islam Karimov’s little-known 1999 truth commission. Apart from looking at transitional justice in contemporary Uzbekistan, I also initiate an inquiry into how today’s oppositionists envision justice should they take power tomorrow, thus giving readers insight into early planning in the justice sphere.

In the final two chapters, I offer a comparative analysis of the four case studies and discussion of the methodological and practical implications of this study’s findings. I begin with a survey of results from each of my case studies and conclude with methodological lessons and policy implications that arise from this effort.

This study of the process by which policymakers decide which path(s) of justice to pursue is important for several reasons. First, if international norms concerning justice continue to develop along their current trajectory, issues of accountability for rights violations may persist in their move from the exclusively domestic sphere to an important component of international relations. Attempts by external state and non-state actors to pressure target states into pursuing particular forms of justice will be more successful and less destabilizing if we better understand how decision makers are likely to interpret the dilemma. Second, understanding the conditions under which regimes employ justice might help us to clarify the reasons for the success or failure of the particular justice policies employed. For example, if we find a large number of cases where truth commissions or criminal trials appear to negatively affect regime stability, it may not be that the mechanisms per se are a poor justice tool, but rather that the specific conditions under which these mechanisms were adopted account for this impact.

Finally, and an important contribution of this book in particular, transitional justice may be more related to other policy spheres than has been previously posited. An exploration of the determinants of justice is simultaneously an exploration into the broader decision-making process in transition states. If new elites are wary of justice policies that might directly or indirectly affect former rulers, they might be equally wary of adopting, for example, economic policies detrimental to former power holders. In the pages that follow, I thus explore a process that has ramifications for the study of transitional justice in particular and the path of transition more generally.
PART I
Explaining Justice

What Are the Key Determinants of Transitional Justice Policy?

In this chapter, I explore the rationale for justice and theoretical arguments designed to explain under what conditions new regimes choose particular justice policies. It is worth prefacing this chapter with a reminder of my definition of transitional justice: a new or nominally new regime’s legal and symbolic responses to past human rights violations. These responses can be broadly understood as memory, truth, and justice in the more classic sense. The root mechanisms aimed at each of these categories involve fundamental words and deeds that in some way create divisions—between new and old, powerless and powerful, victim and perpetrator. Formal rebukes, truth commissions, and criminal trials all share this inherently punitive capacity and pose a risk to other apparently unrelated reform processes. Whenever this occurs, justice is uncertain.

I begin this chapter with a review of arguments for and against pursuing justice. Next, I explore the literature concerning determinants of justice, focusing on relative power arguments, which have gained such an enormous following that they are frequently treated as common sense assumptions. I continue by elaborating on a new way of explaining justice, incorporating broader political strategy. More specifically, I argue that justice cannot be disconnected from electoral politics and the role of economics. In the
subsequent chapters of this book, I will evaluate the strengths and weaknesses of these arguments.

**WHY PURSUE JUSTICE? AN ASSESSMENT OF PROS AND CONS**

Studies of transitional justice are frequently centered on or around the threat of criminal justice, rooted in the logic that imposing sentences today will deter rights violations tomorrow. The challenge of empirically proving this claim, left largely to the realm of counterfactuals, is extraordinarily difficult. As a result, one scholar notes, the deterrence argument “has to be regarded almost as an article of faith rather than something that has been clearly demonstrated by an examination of specific historical evidence.”¹ Transitional justice is clearly not just about criminal retribution. In the words of Kofi Annan, “Justice implies regard for the rights of the accused, for the interests of victims, and for the well-being of society at large.”² If not for the pleasure of revenge or the hope of deterrence, what is the purpose of justice?

Transitional justice, of course, encompasses more than just criminal prosecutions. An underlying theme articulated by transitional justice scholars, who frequently approach their subject equipped with legal and normative arguments for why new elites might pursue various forms of justice, is the need for the new state to acknowledge the former regime’s role in human rights abuses.³ This can be done indirectly through a variety of mechanisms, from restorative measures, such as rehabilitation and compensation, to retributive measures, such as administrative purges and criminal prosecutions. Whatever the method, justice as described in the vast literature seems designed to facilitate two broad, interrelated objectives: societal reconciliation and democratic consolidation. By individualizing victims and, especially, perpetrators, justice policies can end the “dangerous culture of collective guilt”⁴ that contributes to long-term instability, thus putting society back on track for constructive engagement in a new political order.

The transitional justice literature is overwhelmingly focused on the idea that various forms of justice can enhance reconciliation within post-conflict societies. Reconciliation might be defined as “a process through which a society moves from a divided past to a shared future.”⁵ Others conceptualize
it more broadly, on a spectrum spanning from bare coexistence to democratic reciprocity (characterized by open policy debates) and finally forgiveness. In any case, achieving reconciliation necessitates altering post-conflict relations from those “based on antagonism, distrust, disrespect, and, quite possibly, hurt and hatred” to those centered on “respect-based relations of cooperation” that are also essential to instilling trust in the new system and hence to democratic stability. Reconciliation is, in short, a process of “social repair.”

Reconciliation takes place on two planes: at the individual level, focused on alleviating personal hostility and guilt; and at the societal one, involving the reconstruction of intrasocietal relations, including within communities and between political groups and factions. In cases where societies or societal elites are confident that investigations into past abuses would further polarize rather than bring together social actors, an explicit policy of “reconciliation based on forgetting” might be the best road to take. In other cases where, similarly, the past is a can of worms that few wish to open, political elites might pursue reconciliation not so much by drawing a curtain on the past as by focusing on the future, attempting to create “all-inclusive identities” by building a new political discourse “around concepts of human and political rights, legality, individual responsibility, personal rights.” For many advocates of transitional justice, however, a more pro-active policy of addressing the past is an essential first step to moving on.

Reconciliation itself, and the very mechanisms said to make it possible, may strengthen the likelihood of successful democratic consolidation, which Philippe Schmitter defines as “the process of transforming the accidental arrangements, prudential norms, and contingent solutions that have emerged during the transition into relations of cooperation and competition that are reliably known, regularly practiced, and voluntarily accepted by those persons or collectivities (i.e., politicians and citizens) that participate in democratic governance.” Democratic consolidation involves the creation of institutions that both politicians and their publics support. Without some degree of societal reconciliation, justice scholars argue, “negative relations will work to undermine even the best system of governance.”

There is little agreement as to which justice mechanisms are most capable of bringing about reconciliation and democratic consolidation. This debate is most dramatic with respect to criminal prosecutions, which
are often presented in black-and-white terms. “Purists,” including such influential human rights organizations as Amnesty International and Human Rights Watch, tend to advocate for criminal prosecutions in the belief that reconciliation is a consequence of establishing a clear rule of law. For purists, the soil must be thoroughly turned and neatly raked before the seeds of democracy can be planted. “Pragmatists,” by contrast, frequently argue for the necessity of amnesty because, they say, “rule of law itself can take root only in a society that is sufficiently stable and reconciled.” The fields may be littered with debris, but with the right seeds and proper care, they will eventually nourish a flowering garden.

Transitional justice scholars generally agree that various forms of justice can signal the start of institutional reforms, demonstrate that all citizens are liable under the same law, and encourage public support for previously absent democratic values, such as equality and participation. Justice can help to forge a common historical understanding, demonstrate new elites’ institutional disapproval of rights violations, and even enable a new government to enhance its own legitimacy by constructing a wall between itself and the former regime. To do this, chosen justice policies must represent the “will of the people,” as identified through democratic means. Justice can thus be both a function of, and an instrument to strengthen, democracy. Just as justice can help repair victims’ feelings of loss and harm, it can also establish new leaders as “moral authorities that can claim to represent entire communities.”

Authors differ on precisely which forms of justice are the most beneficial and the least harmful under which conditions. Proponents of criminal accountability hold that charging individuals for their roles in yesterday’s crimes is the most important step in reducing collective guilt and placing society back on an equal footing. Justice can be dramatic and demonstrate a new commitment to those liberal rules and values that did not exist earlier, perhaps even where criminal prosecutions take place in illiberal or procedurally flawed environments that effectively ensure that top leaders will be convicted. Trials mark a break with the past, underscoring the message that principles adhered to under the former regime were reprehensible, and thereby instilling a firm historical memory in citizen observers.
Despite the possible benefits, the threat of punishment may be enough to marginalize supporters of the old regime and turn them from potential converts into hostile enemies of the new order. The extent to which justice is targeted at particular institutions may affect democratic consolidation. Though legal scholars question the legitimacy of potentially unpopular blanket amnesties, new elites from Argentina to South Africa have refrained from extensive prosecutions in the hope of bringing closure in a more amicable and less threatening way. Still, scholars warn that while clemency may be appropriate under certain circumstances, a failure to expose past injustices can prove fatal for democratic consolidation: “By refusing to confront and to purge itself of its worst fears and resentments, such a society would be burying not just its past but the very ethical values it needs to make its future livable.”

Perpetrators’ acknowledgments of guilt and expressions of remorse may also be a precondition for reconciliation. Truth commissions, official bodies established to investigate past abuses, might serve as a forum for such pronouncements. These proceedings can also be beneficial for reconciliation in other ways. Priscilla Hayner highlights the important role that perceptions of “truth” play in a stratified, post-transition society, suggesting that disparate versions of a country’s repressive history fuel political tensions that may turn violent. The very act of procedural justice, the telling and hearing of truth about previous abuses, may allow victims to forgive or to at least move on. This is, some argue, particularly true when the truth process is designed to apportion blame to all the guilty parties.

Yet others warn that uncovering some facts may increase friction rather than bring about reconciliation, concluding that “sometimes it is better that some facts about the past remain unknown.” South Africa’s last apartheid leader, F. W. de Klerk, suggested that there were worries among whites that a truth commission might not aim toward reconciliation but instead generate narratives that would serve “as the basis for further recrimination, demonization, and persecution.” Restricting criminal trials to a few of the worst offenders may undermine attempts at uncovering the whole truth. By concentrating blame on the most guilty, criminal trials can assist complicit elements within a society in the whitewashing of their own personal histories. The perpetrators on trial may deflect blame, struggling to find
explanations and excuses. Leigh Payne noted, in regard to Chile: “We all create myths or ‘vital lies’ that keep our images of ourselves and our acts intact. Public confessions, and the desire for absolution, tend to exacerbate that process.”

Even if Slobodan Milošević and Saddam Hussein were guilty in the court of world opinion, both men stood defiant, with no signs of remorse, during months of televised trials. It is difficult to see any evidence that either trial resulted in reconciliation, at least in the near term.

In the long term, some forms of justice may help to clear the way for democratic consolidation by creating a common historical memory. Radical movements that arise to contest democratic states in democracies new and old may be fueled by the failure to deal honestly and effectively with the past. The lack of systematic justice in wartime occupied Europe following the defeat of Germany, for example, allowed non-German societies over time to create more flattering histories. “If Germans were guilty, then ‘we’ were innocent,” Tony Judt writes. “No one had an interest in denying it—and within two years, to do so was anyway no longer possible—the story took root.”

The rise of the xenophobic right in countries from Austria to the Netherlands in the 1990s might in some ways be traced to this phenomenon. A similar “mismemory of communism” allowed people to praise anticommunists no matter how disagreeable and outright criminal their own deeds may have been. Two of the most recent cases of genocide, in Rwanda and Yugoslavia, appear to have been at least partly rooted in previous mass abuses that were left unaddressed for decades. Again, however, concerns about sidestepping the truth must be balanced with the awareness that if the public was widely complicit in past abuses, pointing fingers might jeopardize societal reconciliation and weaken support for the new, democratic regime.

Each of the mechanisms of justice mentioned above invites contestation, most basically at the level of whose truth is being established. This is particularly important because the truth found might inspire or influence other forms of justice. Criminal prosecutions and other official processes designed to investigate the past might help to clear the way for more restorative, victim-oriented forms of justice, such as compensation. Compensation provides the state with an opportunity to elevate formerly oppressed elements of the population without necessarily stepping on the toes
of the oppressor (though it does also involve a redistributive element). For some scholars, compensation is an essential first stage in putting all members of society on equal ground, making victims whole, and initiating a process of reconciliation. Yet, given the high levels of inequality and poverty characteristic of many (post-)repressive states, providing adequate compensation may be too monumental a task for any new government.

This brief glimpse into transitional justice is designed to illustrate just some of the questions that emerge as new elites determine how best to deal with the past, an issue covered in more detail in chapters 2 and 3. What we have learned from the literature to date is that no form of addressing the past is especially easy, and there is no guarantee that any particular mechanism of justice will be a panacea for the difficult transition from nondemocracy to democracy. Crowning all of the dilemmas discussed above is the fear that any specific form of transitional justice, even one that appears quite moderate, might cause political instability sufficient to derail democratization. This remark takes us into the next sphere of debate: Given the various pros and cons of justice, what are the primary determinants of how new elites deal with their repressive predecessors?

TRANSITIONAL JUSTICE AND HUMAN RIGHTS ACCOUNTABILITY: DETERMINANTS OF ACTION

The dilemmas discussed above are not new; for centuries, emerging political elites have struggled with the question of how to account for human rights violations from a former period. More contemporary debate can be traced back to the immediate post–World War II era, when the victorious Allied forces applied still-evolving international judicial norms to those vanquished powers accused of heinous war crimes. Yet just as the Nuremberg and Tokyo trials were a leap in international human rights, they took place under “exceptional political conditions” that disappeared within only a few years. The next phase in transitional justice occurred during the Cold War, when bipolar power struggles stunted the growth of the nascent transitional justice movement. As harsh authoritarian regimes in Latin America, Africa, and Eastern Europe fell in the 1970s and 1980s, incoming elites sought to balance the norms of justice that emerged in the
postwar era with political constraints present in the absence of all-out military victory. Retributive measures, such as mass criminal trials, were frequently replaced with more lenient policies, including truth commissions and blanket amnesties.

Perhaps conditioned by these systemic observations, theoretical arguments designed to identify key determinants of justice in post-repressive states are bound by a common thread: a focus on the relative power of incoming and outgoing elites. Put simply, the greater the relative strength of the old elites compared to the new, the less likely we should see new elites pursue “harsh” forms of justice. Strands of this relative power hypothesis are differentiated by definitions of power and underlying processes. I focus my discussion on three particular types of relative power arguments, centered on political transition, state structures, and public support.

One of the most widely cited explanations in the transitional justice literature focuses on the mode of transition from authoritarianism to democracy. According to this elite-level argument, the path of transition affects justice in two ways. First, it demarcates on a normative level what policies may or may not be acceptable, as the result of a “gentleman’s agreement” that might have occurred between negotiating parties. Second, and more important, it suggests that transition type influences the post-transition distribution of political power and, hence, the types of policies available to new elites. According to Samuel Huntington, elites rising to power through revolution are most likely to implement harsh forms of retributive justice, since the former regime’s power base (and its ability to cause trouble in the new state) is presumably destroyed. By contrast, political elites emerging from a negotiated transition often give explicit or implicit amnesties to members of the still-powerful old regime and should therefore exercise more restraint in the justice sphere. The least aggressive attempts to deal with the past should occur in states where old elites voluntarily hand over the keys to the new rulers (a “transformation”). As Huntington summarizes his assortment of cases, “Justice was a function of political power. Officials of strong authoritarian regimes that voluntarily ended themselves were not prosecuted; officials of weak authoritarian regimes that collapsed were punished.”

Numerous scholars have signed onto Huntington’s typology. For some, transition dictates the terms of justice by diffusing power between old and
new elites in such a way that no one set of actors can impose its will on others. Only where new elites have victoriously defeated their predecessors can they pursue more aggressive justice policies. Supporters of this argument tend to focus on the veto powers of old elites, who can block prosecutions, as well as the threat of a violent backlash by still-strong perpetrators. In cases of negotiated transition, new elites are said to be “too vulnerable to discard clemency.” Supporters of Huntington’s theory find an apparently ideal case in the widely studied transition of South Africa, where departing political elites forced amnesty onto the negotiating table in the form of a constitutional amendment. As outgoing president de Klerk plainly explained, “The South African government had not been defeated in battle and the ANC [African National Congress] was not in a position to dictate terms to it.”

Other scholars adhering to the relative power logic define power more broadly, taking into account state structures. Guillermo O’Donnell and Philippe Schmitter, for example, emphasize the continued presence in key power ministries of those actors who were complicit in prior abuses. In the South American context, the military is particularly relevant; in Eastern Europe, the police and secret security forces might receive more attention. Their power, as an ostensibly cohesive, armed group, gives these actors the means to disrupt the transition. Presumably, those at higher levels command the significant influence and resources that make justice difficult, though it is feasible that large numbers of lower-level officials acting as a collective might pose the same threat. Loyalties to the old regime and potential feelings of complicity among members of the broader bureaucracy (as well as the judiciary) supply them with the motive for action. The combination could have important ramifications for new elites’ capacity to rule, much less to engage in transitional justice.

In practice, the structural argument is largely focused on military regimes, making it sometimes difficult to separate the structure-based elites from the political elites emphasized in the transition-based argument. Supporting evidence for the structural argument is often found in Latin American cases, where military leaders led the negotiation process by which they left executive office but not the military itself, thus positioning them to be, in the words of one well-known Chilean human rights lawyer, a “formidable factor to reckon with.” According to this theory, there is a strong fear by new elites that the military might reenter the political sphere if
justice is pursued aggressively, particularly given the cohesive nature of the military as an institution. As Tina Rosenberg commented, “powerful militaries still have those guns, the support of the influential upper class, and the arrogance that justified their abuses.”

The structural argument is also relevant to nonmilitary dictatorships. Returning to the apparently clear-cut South African case, some in the opposition felt constrained not merely by former elite leaders, but also by those who ran their oppressive apparatus. “The security forces were concerned about their future,” an aide to the African National Congress’s chief negotiator recalled. “They were not going to go along with an agreement that would put them before a firing squad; why should they?” In this second version of events, South Africa’s negotiated settlement demanded compromise and consensus to obtain the loyalty and cooperation not so much of the former ruling class, but of their institutional strong arm.

Finally, others apply an even broader definition of power, based on public support. This argument is in part premised on the notion that new elites shy away from justice measures that could inflame public opinion and increase instability, where significant sectors of society were previously aligned with the old regime. Some proponents of justice have argued that individual criminal accountability can enhance civic unity by transforming collective guilt into a narrower “stigmatization of the political and military leaders who planned the atrocities.” But others warn of the opposite: justice can lead to feelings of unfair collective punishment and increasing societal polarization, forcing some societal groups into a hole from which it is difficult to emerge. José Zalaquett presents non-elites as a potentially violent constraint, arguing that a state’s social (for example, ethnic, religious) structure may preclude certain types of justice if such policies could antagonize intrasocietal relations, thus “exacerbating divisions that may threaten national unity.” Even Huntington, despite his succinct typology, acknowledges this, referring frequently to referenda on justice measures and quoting one Romanian government official as saying, “If we publish the [secret police] files as some people have suggested, there could literally be something worse than a civil war, with friend turning against friend once they find out what is contained in them.”

The degree of public acceptance or hostility for an accounting of the past, in turn, may depend partly on the nature and timing of repression.
Decisions on how to deal with the more recent past can arouse strong feelings among societal actors, particularly where high degrees of complicity in past injustices create an atmosphere of what one scholar refers to as “dirty togetherness.” Yet the policy dictated by these emotions is unclear. Some observers, such as Zalaquett, have argued that, precisely at this time, justice is most risky and should be put on hold. Others argue that over the long term, as the intensity of emotions fades, there will be less support for aggressive justice, which ostensibly will make justice more difficult to pursue later as opposed to earlier. As a result, crimes committed a relatively long time ago, or those involving less egregious abuses, might be easier to forgive and forget. Of course, the real world does not always fit neatly with these predictions. A Spanish judge recently branded Franco’s Spain, where 114,000 were sentenced to death during the 1930s civil war, a “crime against humanity” and launched a series of prosecutions. Yet in Spain there has never been a strong public desire to account for that past, even in the immediate post-Franco years.

It should be highlighted that this Spanish case represents an isolated judicial decision rather than a formal political one. The public support argument might be better applied to yet a third interpretation of the South African case, where some have seen de Klerk’s efforts at amnesty as a tactic to minimize public strife and “head off trouble from the militant, vulnerable, white right-wingers.” Still, it is clear that public opinion cannot always predict justice policy, perhaps because not all elites interpret or respond the same way to public demands. For example, Argentina’s leadership sought immediately after the 1983 elections to placate public opinion by prosecuting senior military officers and establishing agencies to uncover previous abuses. Yet their successors six years later issued mass pardons to those criminals, despite widespread disapproval for the move. In other cases, such as in neighboring Chile, where citizens do not support aggressive justice, some have argued for “public moral leadership that depends ultimately on persuading the people of the correctness of a position, not merely forcing them to submit to it.”

This review of relative power arguments, as well as the various interpretations of the South African case, demonstrates differing degrees of overlap between the particular strands. Still, they differ not only with respect to who determines the relative power of old and new, but also with regard
to the implicit or explicit mechanisms that make relative power a serious constraint. Huntington’s transition-based argument seems in part to adhere to normative aspects of the bargaining process (the necessity of upholding informal agreements established just prior to a democratic breakthrough). But it also seems to imply, as do proponents of the structural argument, that if relatively weak new elites pursue retributive justice, they risk a coup or failed state (marked by the inability of new elites to implement policies). By contrast, those focused on societal conditions warn that aggressive justice could lead to civic unrest and even civil war, depending on the attitudes, and perhaps level of complicity, of the broader society. Ultimately, however, all of these arguments center on new elite fears that powerful elements implicated in yesterday’s rights violations can (violently) destabilize the political sphere if they perceive justice policies as threatening.

These various relative power arguments all point astutely to possible risks of transitional justice, but each comes with a set of potential weaknesses. Challengers to elite-level, transition arguments might ask why post-oppositionists should respect deals made through arm-twisting by illegitimate outgoing elites, particularly in cases where new elites rapidly and democratically accrue more political power than predicted by transition type. As Zalaquett notes, “political situations are far from static, and if the new government consistently follows the best possible approach, despite being limited by the circumstances it faces, new possibilities may open up along the way.” While state-structure explanations address some of the shortfalls in elite-level theories, they leave unaddressed important questions about the cohesiveness of institutional actors, the majority of whom were probably not directly complicit in past violations. Structuralists also sidestep the issue of mass participation in the initial regime change, a factor that may embolden members of the former democratic opposition.

The most obvious weakness of public support explanations is, as with each of the preceding strains of relative power, a lack of elasticity. Are public attitudes non-malleable, structurally determined by experiences and perceptions of past injustices? Or are they more dynamic, influenced by perceptions of present governmental successes and failures, or are they even subject to elite persuasion? Moreover, to what degree is the public directly or indirectly involved in choosing the path of justice? And, finally, are societal conflict and polarization an inevitable result of justice in democratiz-
ing states where institutions allow for mechanisms of peaceful conflict resolution and where political identities can be quite fluid. In many cases, it appears that even the most aggressive forms of justice are designed primarily by and for elites themselves.

**MOVING FORWARD: THE STRATEGIC ARGUMENT**

Relative power arguments dominate the literature in part because they are so intuitively appealing and seem, at least on the surface, to adequately reflect the way the world works. However, these arguments are largely untested and plagued by methodological concerns discussed in the next chapter. Moreover, while relative power is largely backward-looking, there is reason to believe that “weight of the past” explanations (such as transition type and nature of past violations) cannot be considered in isolation from “politics of the present” ones (such as contemporary political setting and other contextual factors). Studies incorporating the two have raised challenges to relative power in the context of previously well-researched cases. For example, in an analysis of three Latin American states, David Pion-Berlin found that while the nature of rights violations and relative power issues helped to set the boundaries for political action, elite preferences and strategic calculation shaped concrete policy outcomes within these confines. Such studies in part lend credence to the growing belief that there is no single determinant of justice out there.

These studies also pave the way for a relatively new direction of inquiry in which important elements of the contemporary political environment may influence justice: what Elster refers to as the “more or less ordinary struggles” characteristic of daily politics. For Elster, such ordinary struggles include efforts at excluding or tainting groups connected to (or soft on) the former repressors. Some scholars looking beyond the past have found that everyday coalition politics, characterized by a messy game of give-and-take, has an important influence on justice. Others focus on the more concrete side effects of justice that might occur, such as deteriorated administrative capacity and depleted resources, which may affect new elites’ ability to efficiently govern. Still others point more directly to fears among political elites that justice might be seen by their constituents...
as a distraction that prevents politicians from tackling more serious, current problems. While these ideas tend to be supported only anecdotally, they represent an important step forward in how we think about justice.

A reexamination of the constraints on transitional justice thus forces us to place the dilemma in a broader strategic framework, where new elites are seen not merely as defenders of the new status quo, but also as political actors striving to maintain power through at least the next elections. Transitional justice can be a plus or a minus in the broader battle for political survival, which, according to the strategic argument, involves balancing inherited constraints with incentives for (in)action created by the everyday political environment. This environment may include transition-based constraints when old elites continue to share political office with new elites, or structure-based constraints when old elites continue to dominate in the power ministries responsible for previous abuses. But the greatest constraint, I argue, emerges in part from public support—based relative power arguments. Leaders whose positions depend on their ability to satisfy their constituents must constantly keep one eye on the public’s perceptions and preferences.

The strategic argument differs from the public support argument in two important ways. First, the strategic argument is based on the understanding that justice policies, like other public policies, are multidimensional and can be judged along several criteria. Political elites can frame issues in ways that undermine rigid public support arguments. For example, leaders may effectively bury the most disputed aspects of policies while simultaneously demonstrating how abstract or controversial policies will have a positive impact on people’s daily lives. Second, and related, according to the strategic argument, new elites pursue justice policies for which, they calculate, given this multidimensionality, citizens will not vote them out of office. The strategic argument essentially posits that justice is akin to a commodity that can be traded for other policies. Leaders calculate whether they can use the multidimensionality of the policy process to make otherwise unacceptable policies feasible and even advantageous. Finally, while public support arguments focus on the risk of violent intrasocietal schisms based on citizen relationships to past violations, the strategic argument’s focus is more on the risk that particular justice policies may cause constituents to become disaffected with a specific political party (or politics
altogether) based on their expectations of how these policies affect broader governance (which can also include justice).

I preface this argument with two basic assumptions. First, I assume that a significant portion of new elites, whether motivated by morality, pragmatism, or vengeance, shares private preferences (that is, a personal desire) for harsh justice, insofar as such a policy does not jeopardize their own political survival. Criminal accountability can enhance democratic consolidation (and hence is in the long-term interest of new elites) in a number of ways, from demonstrating a split with the past and equality under the law, to forging common historical understandings and reducing perceptions of collective guilt that might fuel long-term instability. Other forms of justice, including truth commissions, victim compensation, and apologies/condemnations, may satisfy some of these objectives, though harsher mechanisms such as administrative purges and criminal accountability have the added plus of eliminating political opponents. The infrequency of explicit references to this assumption may result from the sharp divide between scholars primarily interested in theoretical determinants of transitional justice and those who advocate transitional justice for a long list of moral, ethical, or practical reasons.

Second, I assume that there are various sources of (potentially conflicting) pressures for and against justice: domestic non-elites, domestic elites, and—often overlooked in the contemporary literature—international elites. States, intergovernmental organizations, and nongovernmental organizations (NGOs) undermine state autonomy in a variety of spheres today, and in the past two decades they have openly expressed preferences for particular types of justice and provided tangible and nontangible pressures to pursue these ends.

In order to maintain power, new elites must thus cater to various interests, which may include the general public, former elites, and international actors. Ultimately, it is the first group that decides who will rule tomorrow. The strategic argument is based on the understanding that democratic leaders are accountable to constituents who expect government to provide essential goods and services. These may be public goods, such as order, security, and civil liberties, or “political goods,” from which the broad public benefits, such as anti-inflationary or pro-employment economic policies, or membership in international organizations (and their respective security
or economic dividends). The provision of these political goods is a central feature of political viability in democratic states,\textsuperscript{109} and features prominently in the good-government literature.\textsuperscript{110} Political leaders concerned primarily with their own political survival must ensure that justice policies are perceived to further, or at a minimum not interfere with, the provision of goods that these leaders can influence.

The strategic approach shares some features of standard rational choice arguments, including the assumption that individuals act first and foremost in pursuit of their own advancement (whether measured in power, money, or prestige) and then act on a coherent set of preferences ranked by the degree to which each policy furthers these objectives.\textsuperscript{111} But in contrast to rigid institutional approaches, according to which policy preferences are largely determined by the institutional setting in which a leader finds him or herself, I argue that politicians’ preferences may be set prior to taking office, leaving new political elites with the task of balancing personal preferences with institutional constraints.\textsuperscript{112} Elites construct policy based on their internal calculation of what they need to provide citizens to be reelected; what they themselves prefer in terms of (justice) policy; and how their (justice) policies might be perceived by constituents to affect delivery of the first.

According to the strategic argument, transitional justice policies are the result of a two-stage process, the first focused on institutionally determined reward structures and the second on institutional competition. This argument takes into account the degree to which political elites are accountable to the public, the types of goods and services that they are expected to provide, and how they anticipate public reactions to their policy choices in particular circumstances.

I focus on two basic types of institutions that play a key role in determining justice policy: constitutionally authoritative \textit{primary} institutions that directly determine the provision of public-regarding goods (for example, a prime minister in a parliamentary system); and constitutionally weak \textit{secondary} institutions that have only an advisory or symbolic role in the allocation of these goods (for example, a president in the classic parliamentary system).

Constitutional status plays a critical role in defining the rules of the game that various governing elites must play to stay in power. Among the
important factors influenced by the constitution are terms and constituencies. A president with a guaranteed term might, for example, be more willing to defy constituent demands in the short term than would a prime minister subject to the constant threat of a vote of confidence. Similarly, constitutional delimitations into national versus local constituencies can impact actor preferences, perhaps differentiating prime ministers accountable to aggregated preferences from individual legislators accountable to more local demands. But the most important aspect of constitutional status, I argue, is delegation of authority. Institutional context, even in new democracies, affects how individuals attribute political responsibility for policy success or failure. It is the constitutionally empowered who suffer most when citizen expectations and policy outcomes are out of sync. Different perceptions about constituent demands, even when those constituencies are identically composed, should influence the policy preferences of new elites in different institutions.

The idea that elites rely on their own perceptions, rather than on actual indicators, of public opinion is an important point worth emphasizing. While polling data might indicate where citizens stand on particular issues, there tend to be very few studies that provide data on specific attitudes toward various forms of justice and the salience of those attitudes. This is particularly true in transition states where institutions designed to elucidate citizen preferences may be nonexistent or suspect. There is also evidence that elites may misjudge public opinion based on a more narrow perception of constituency demands and that even with available information, elites sometimes act inconsistently with those demands concerning issues that they judge to be less salient than others. Under these circumstances, leaders take it upon themselves to calculate how justice is likely to be interpreted, taking into account social, economic, and political conditions.

At the first stage of the strategic argument, institutionally based reward structures play a critical role (see Figure 1.1). Since primary actors are responsible for effectively providing political goods, citizen expectations of them are very high. In these institutions, justice policies will be largely dictated by the bottom line: when justice is seen as an impediment to the delivery of goods, it should be avoided; whereas, when it is viewed as beneficial, it should be pursued. Impediments are measured in perceived
opportunity costs; even if justice has very little monetary cost, it may be seen as politically costly if it is viewed, for example, as an excessive policymaker preoccupation. Public attitudes toward justice govern the relationship between goods and justice policies. If the public is neutral or in favor of particular justice measures, elites must simply demonstrate that such measures do not interfere with the provision of goods or may actually comprise an important political good. If the public is staunchly opposed to these measures, primary actors will only be able to pursue justice if they can explicitly link the chosen justice policies to their ability to better provide core political goods, in essence buying off their constituents.
The behavior of secondary actors is less predictable. As with primary actors, secondary actors must calculate what they must provide to be re-elected, their own justice preferences, and likely constituent perceptions of their justice policies. But, critically, the weakness of their institution reduces citizen expectations with respect to the sorts of political goods that secondary actors can offer. This, in turn, frees secondary actors from a key policy-making constraint. So while policy choices could be mediated by political strategy (for example, populism), lower public expectations create more room in which secondary actors’ private preferences and ideology may play a role. Even though these secondary actors are constitutionally incapable of halting the will of primary actors, they can employ agenda setting, issue linkages, and public political pressure to increase or decrease primary actors’ costs of pursuing justice. The introduction of justice legislation or public statements, appeals, and campaigns might force primary actors to alter their policies.

At the second phase of the strategic argument, configuration of cross-institutional preferences shapes policy outcome (see Figure 1.2). When both primary and secondary actors share preferences for criminal accountability, the political outcome should be facilitated (expedited). Similarly, a
cross-institutional antipathy to such harsh justice should close the books on that option until such preferences change (impeded). Where primary actors support a process that secondary actors oppose, we should find slow and cautious implementation of criminal accountability (sluggish). Where the roles are reversed, primary actors should behave as veto players, blocking or watering down aggressive efforts at justice favored by secondary actors (abortive). An abortive outcome may be reflected in more lenient forms of justice, such as truth commissions, efforts at victim compensation, or general condemnations of perceived abusers.

In summary, the strategic argument suggests that justice policy can be less a function of new and old elite power than it is a consequence of institutionally motivated preferences. The path of transition and other aspects of the past, such as public attitudes and the presence of old elites in decision-making bodies, may place some constraints on justice. But these constraints should not be exaggerated. Leaders tasked with running the country will pursue their preferred justice policies when these pose minimal political or economic risk (or are seen as advantageous), and they will eschew justice when it is seen as potentially costly. Justice policies may not be chosen to explicitly advance political careers or personal fortunes, but the more likely these policies are to undermine those objectives, the more likely they will be avoided. Levels of policy authority can help to account for diverging justice preferences across institutions and between governmental bodies. Those political elites with less policy authority may influence policy output through a variety of mechanisms, bringing it more in line with their own preferences. Justice is a compromise between new elites facing divergent, institutionally defined demands from their constituencies, as well as their own preferences, not simply between new elites and their former oppressors.

LIKE OTHER APPROACHES to transitional justice, the strategic approach is a simplified model seeking to explain a complex phenomenon. The strategic argument is meant to complement, not replace, relative power arguments. The two share a common logic: political leaders must take into account the implications of justice policies on their broader goals, which might include
maintaining (or attaining) power and acting on individual, private preferences. Justice policies have implications beyond the direct outcome of a particular mechanism, so just as the decision to launch criminal prosecutions might result in societal reconciliation or civil war, it might indirectly signal the start of an economic boom (for example, thanks to renewed faith in the rule of law) or an economic crisis (caused by fear of political instability).

I have consciously structured the strategic argument in a way designed to incorporate relative power concerns. For example, primary actors determined to balance justice policies with the provision of political goods will obviously act differently when new elites completely rule the primary institutions versus when they share power with old elites. In the case of the former, new elites might be able to more aggressively pursue justice than in the latter, where they might be forced to make compromises to ensure that their colleagues from the old regime support other (political goods) policies also on the agenda.

Other aspects of justice also find a place in the strategic argument, acting as implicit constraints on, or incentives for, particular forms of justice. Justice frequently plays a role in identity politics, for example. The degree to which citizens identify with and support justice should impact on new elites’ internal calculations of what they must provide to win reelection. Where publics are enthusiastic justice supporters, new elites might be able to pursue more aggressive measures without the risk that their constituents will perceive these policies as overly cumbersome and as an obstacle to the provision of other political goods, because justice itself could be seen as a political good in this context. Where publics are less interested in opening up the past, new elites face a more difficult balancing act.

By focusing on new elites’ internal calculations of what publics want and expect from them, the strategic argument allows us to take into consideration a range of variables not explicitly addressed, which help set new elites’ parameters of movement. In one country, justice may face public opposition due to high levels of complicity; in another, it may be intimately linked to identity; and in a third, the public may have little interest at all. In each case, the degree of perceived public support will indirectly affect new elites’ internal calculus of how much people are willing to pay for justice. Structural constraints, including the explicit costs and the opportunity costs
of a particular justice policy (which may in part result from the power that old elites continue to wield), must be balanced against this internal calculus to inform elites what forms of justice are politically feasible. In the next chapter, I discuss seven specific types of justice that are frequently undertaken in post-repressive states. These justice measures make up the “transitional justice spectrum” that serves as my basic dependent variable in each of the case studies that follows.