

Postwar policies and Transitional Justice

Francisco Villamil

War, peace, and political violence

UC3M, Fall 2024



Asia

Sri Lanka celebrates end of war in victory parade after banning commemoration of victims

Reading Time: 2 minutes

Why you can trust SCMP



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What happens after war ends?

- Ending violence
- Maintaining peace
- **How?**
- Peacekeeping, peacebuilding, and related



Total size of United Nations peacekeeping forces

100,000

80,000

60,000

40,000

20,000

1947

1960

1970

1980

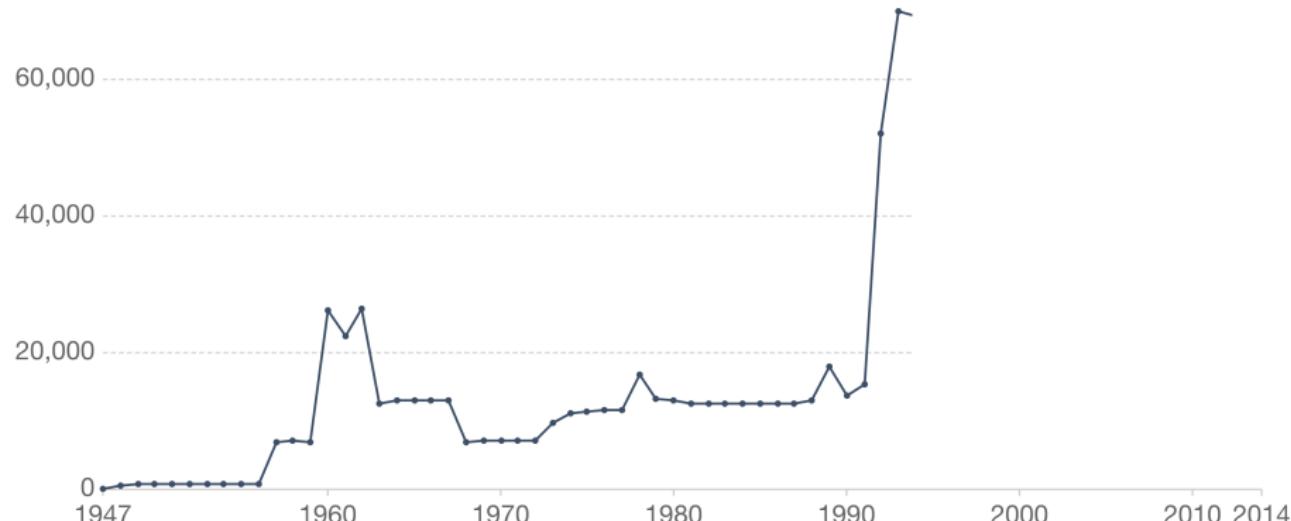
1990

2000

2010 2014

Source: United Nations Peacekeeping

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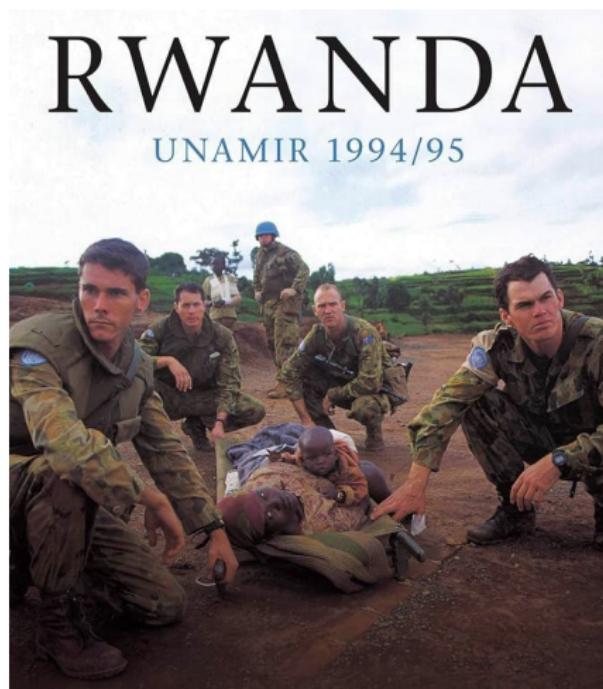
Pessimism



Dutch Blue Helmets in Bosnia

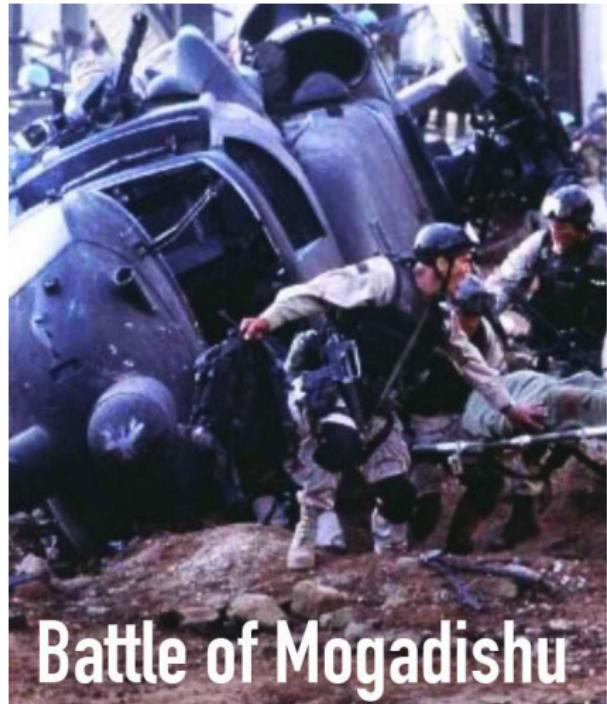
- Srebrenica Massacre (July 1995)
- >8000 Bosniaks killed by the Bosnian Serb Army in a UN-designated “safe area” protected by Dutch Blue Helmets

Pessimism



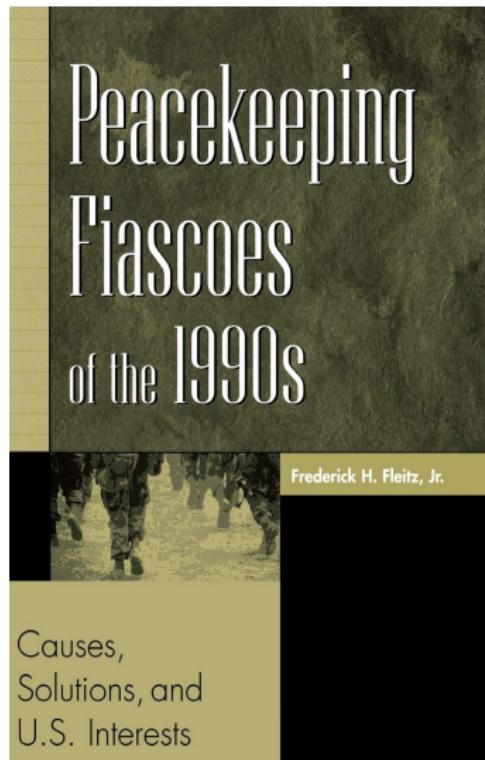
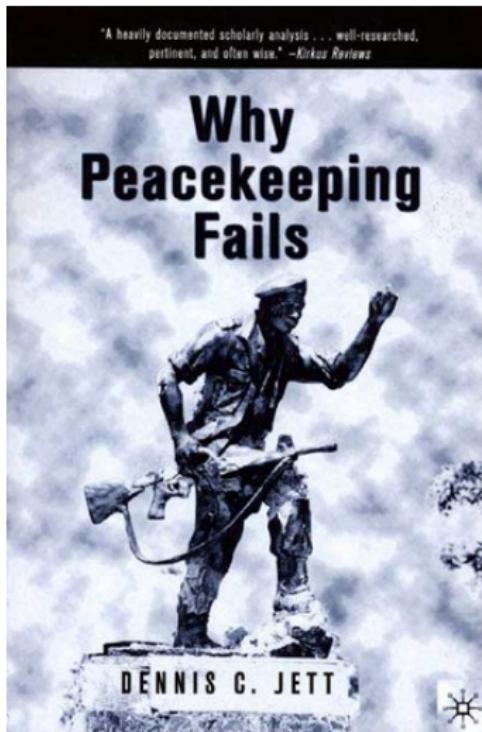
RWANDA

UNAMIR 1994/95



Battle of Mogadishu

Pessimism



Give War a Chance

Edward N. Luttwak

PREMATURE PEACEMAKING

AN UNPLEASANT truth often overlooked is that although war is a great evil, it does have a great virtue: it can resolve political conflicts and lead to peace. This can happen when all belligerents become exhausted or when one wins decisively. Either way the key is that the fighting must continue until a resolution is reached. War brings peace only after passing a culminating phase of violence. Hopes of military success must fade for accommodation to become more attractive than further combat.

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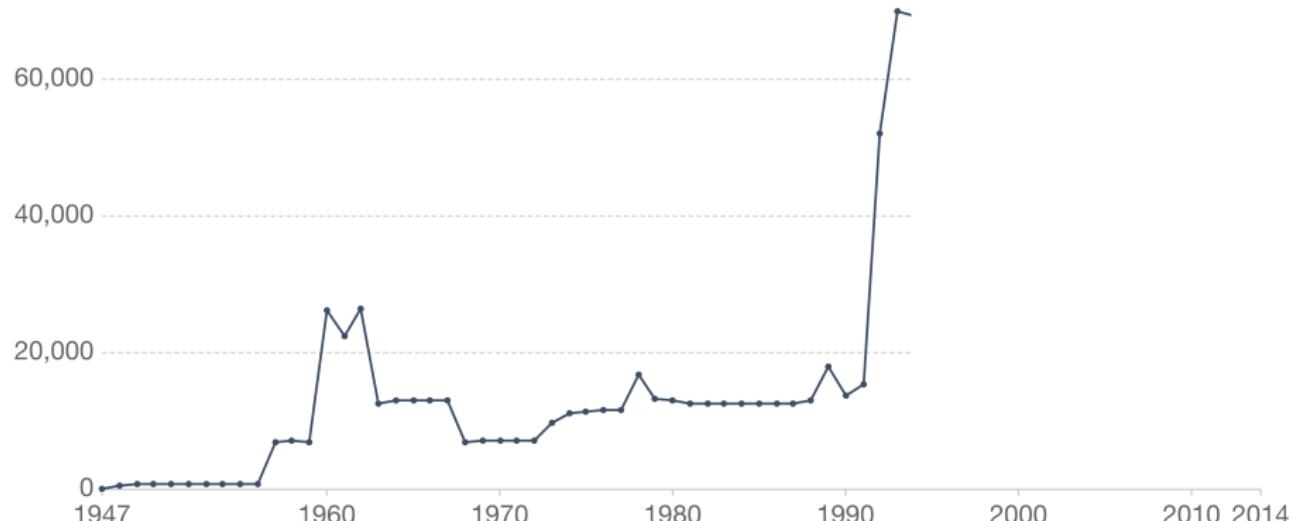
1990

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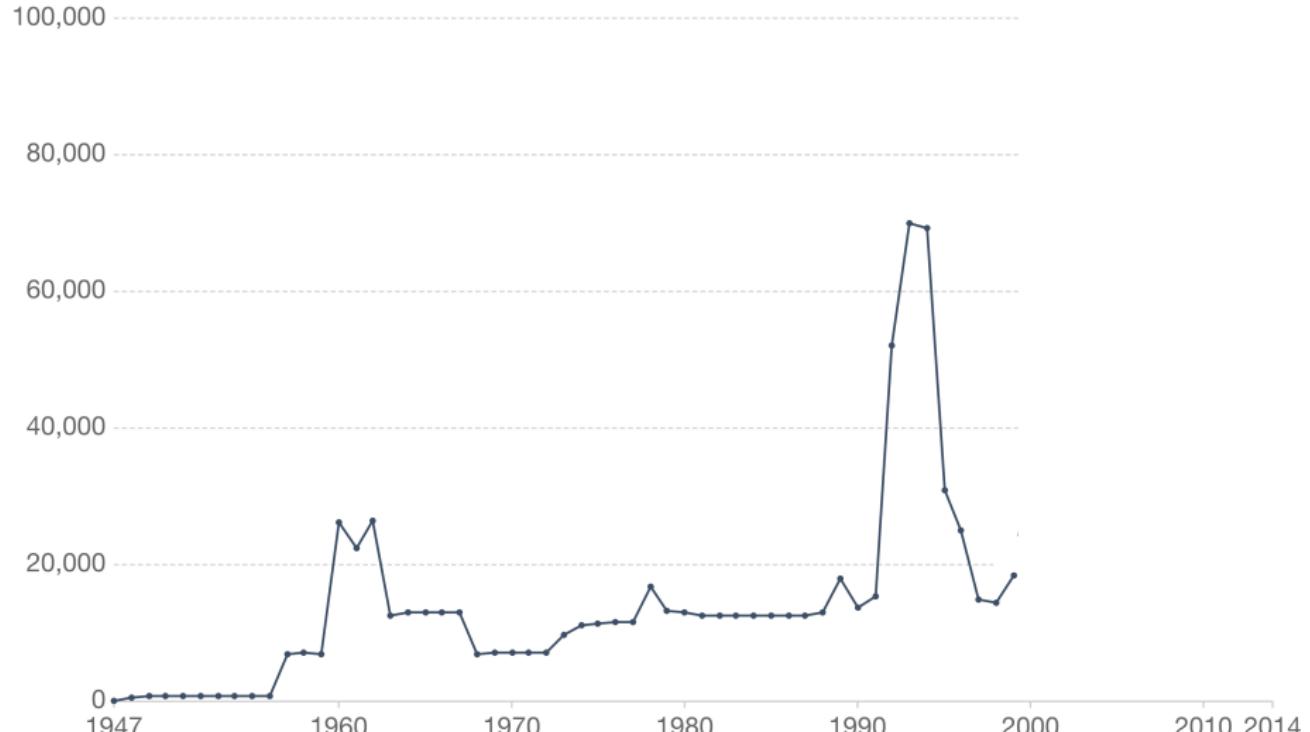
2010 2014

Source: United Nations Peacekeeping

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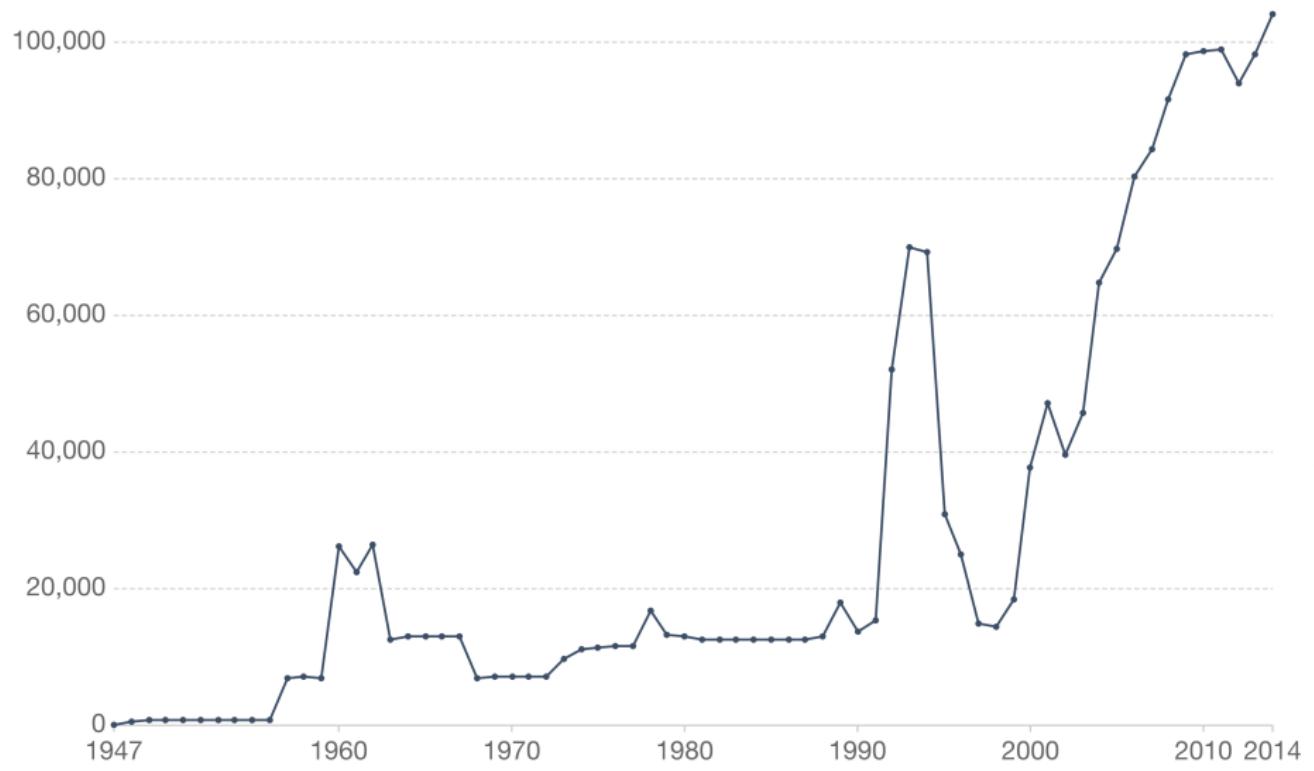
Total size of United Nations peacekeeping forces



Source: United Nations Peacekeeping

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Total size of United Nations peacekeeping forces



Source: United Nations Peacekeeping

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Netanyahu wants UNIFIL out of southern Lebanon. Why?

As Israel attacks the UN mission and calls for its removal, experts warn a withdrawal will make it impossible to monitor violations of international law.



03:02



Peacekeeping is one among a range of activities undertaken by the United Nations to maintain international peace and security throughout the world.

The other activities are:

- conflict prevention and mediation
- peacemaking
- peace enforcement
- **peacebuilding**

Peacebuilding strategies

- Key goal: avoiding **conflict recurrence**
 - Peacebuilding strategies follow similar logics to the study of civil war onset
1. **Greed-based**: postconflict peace more stable if there is economic growth
 2. **Opportunity-based**: focus on strengthening state capacity after a conflict, and commitment problems in power-sharing
 3. **Grievance-based**: postconflict peace more stable if there are power-sharing agreements
- Policies usually more feasible and faster than achieving development

The role of power-sharing

- What is power-sharing ?
- Larger question on how to **manage divisions**
- Applies to political but especially to ethnic divisions
 - Options: hegemony, ethnic cleansing, self-determination, assimilation, individual pluralism (no management), power-sharing
- Different types: political, territorial, military, economic...

The role of power-sharing

- Opinions and studies on power-sharing:
 1. Early studies: making democracy work
 - Lijphart, cases of Switzerland/Belgium, consociationalism...
 2. Second wave: avoiding conflict in multi-ethnic states
 - Focus beyond W Europe (Lebanon, Cyprus, South Africa, ...), role of institutions
 3. Third wave: post-conflict power-sharing

The role of power-sharing

- **Peace agreements** can include provisions of political, territorial, military, and economic power-sharing
- Each of this dimensions is different (and multi-dimensional agreements are more effective in preventing conflict recurrence)
- However, their effect might depend on **timing** and be more problematic in cases of ethnic conflict
- For example: **Territorial power-sharing** (autonomy) seems to prevent conflict onset but **not** recurrence: once conflict has taken place, the commitment problem is worse and effective agreements might need government power-sharing as well

Khartoum clinches peace deal with most Sudan rebel groups

Accord aims to end almost two decades of fighting in Darfur and violence in South Kordofan and Blue Nile



From right, Abdalla Hamdok, Sudan's prime minister, Salva Kiir, South Sudan's president, and General Abdel Fattah al-Burhan with copies of the peace deal in Juba, South Sudan, on Sunday © REUTERS

2 minute read · October 21, 2022 9:25 AM GMT+2 · Last Updated a month ago

At least 151 people killed in renewed violence in Sudan's Blue Nile state

Reuters

KHARTOUM, Oct 20 (Reuters) - At least 151 people were killed and 86 injured in fighting in Sudan's Blue Nile state over recent days, medical sources said on Thursday, the latest outbreak of violence to rock remote conflict-weary regions.

Despite a peace deal signed in 2020 with some of Sudan's rebel groups in the western Darfur region and in Blue Nile and southern Kordofan, tribal fighting has steadily increased.

Analysts blame the fighting on unresolved issues of land and citizenship as well as the militarisation of tribal groups. It threatens to further destabilise the country which has been in political and economic turmoil since the military seized power and disbanded a civilian-led government a year ago.



There is no end in sight for Sudan's catastrophic civil war

The outside world cares less about it than about Gaza and Ukraine



Is ethnic power-sharing effective?

- Regional autonomy vs central power-sharing
- Effectiveness depends:
 - Autonomy concessions work **before** conflict outbreak
 - But they do **not** prevent **recurrence**
 - If there has already been a war, **central power-sharing** needed

Map of the Philippines showing the still majority Moro Muslim areas in Mindanao

This map shows the Christian and Islam areas in the Philippines

Legend:

- Christian majority areas
- Islam majority areas



This is based on the census and the referendum for Bangsamo Autonomous Region

Map: Philippine History • Map data: © OSM • Created with Datawrapper

Moro conflict

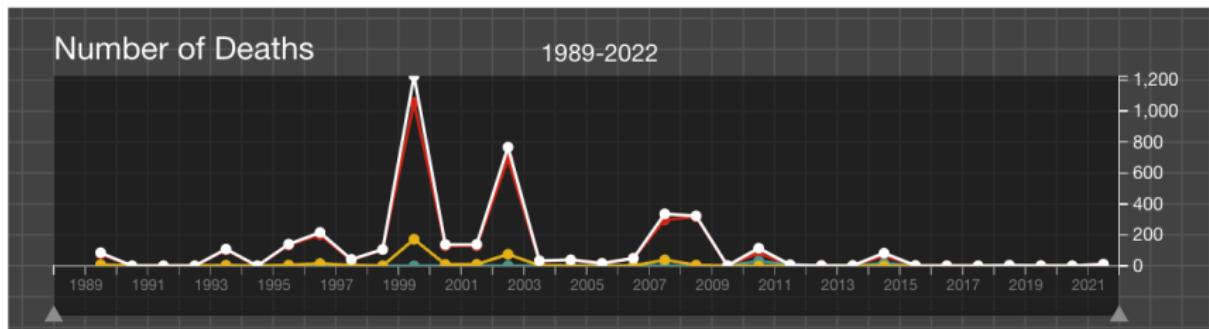
- MNLF (1968)
- Moro Islamic Liberation Front (1977)



1996 Final Peace Agreement (MNLF)



Moro Islamic Liberation Front



Access to central power?



Map data © OpenStreetMap contributors



The role of power-sharing

- A similar problem with a powerful power-sharing device:
democratization
- In principle, it should be good:
 - legitimizes postwar governments, gives rebels a platform to seek political goals peacefully, etc
- However, particularly if institutions are weak, democracy
could be counter-productive
 - Increasing social tensions, polarization, bringing about electoral violence...
 - Postwar elections might undermine peace if held too soon, and democratization during a war might bring about civilian victimization
 - Related to the way we deal with **past violations**

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Transitional Justice

- **Criminal trials**
 - vs. **Amnesties**: we might not see it as a 'TJ mechanism', but state leaders usually do
- **Reparations**
- **Lustration**
- **Truth**
- **Memory & symbols**
- **Others:**
 - Institutional reform, gender-specific TJ, ...



Nüremberg Trials

- First *international war crimes* tribunal in history
- New ideas: crimes against humanity, crimes against peace
 - Different from old *jus in bello*
- Importance of the Holocaust
- Context: interstate war, military defeat

Yugoslavia trials (ICTY)



Former Serb President, Slobodan Milosevic facing the ICTY judges the 2nd day of his trial

Yugoslavia trials (ICTY)

Slobodan Praljak suicide: War criminal 'took cyanide' in Hague court

0 1 December 2017



| Slobodan Praljak drank a small vial of liquid after his prison sentence was upheld

Bosnian Croat war criminal Slobodan Praljak died after taking potassium cyanide in The Hague's courtroom, Dutch prosecutors say, citing the results of a preliminary post mortem examination.



Ante Gotovina trial



- Trial of the Juntas
- Early example of *domestic* human rights prosecution
 - Not the first though
(Greek junta trials,
Portugal (limited)
trials)
- A third option are *foreign trials*



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en tregua

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Otro Goya para
Paco Rabal

EL ESPECTADOR



Alucinación
en Córdoba

EL VIAJERO

Pinochet, detenido en Londres a petición del juez Garzón

Conmoción en Chile, donde el Gobierno protesta ante el Reino Unido

La detención fue a medianoche. A esa hora del viernes, varios agentes de Scotland Yard irrumpieron en la habitación de la London Clinic, la clínica londinense donde está ingresado el general chileno Augusto Pinochet, de 82 años, convaleciente de una operación de hernia discal. Dormía, le despertaron y le informaron de que quedaba bajo arresto. Le mantuvieron incomunicado durante dos horas, hasta que el embajador chileno en el Reino Unido consiguió que se levantase la medi-

da. Éste es el relato del arresto del ex dictador chileno proporcionado por uno de sus amigos, Luis Cortés Villa, presidente de la Fundación Pinochet.

Horas antes, en Madrid, el juez Baltasar Garzón había firmado una orden de detención de Pinochet cursada a través de Interpol. Garzón y otro magistrado, Manuel García Castellón, esperan desplazarse en los próximos días a Londres para interrogar a Pinochet sobre algunas de las 1.101 desapari-

ciones de adversarios políticos sucedidas durante sus 17 años de gobierno. Es probable que acaben pidiendo su extradición. "Los dictadores nunca acaban bien", declaró hace unos días Pinochet a la revista *New Yorker*, anticipando sus problemas.

La detención del ex jefe de Estado chileno causó una auténtica conmoción en Chile, donde hubo júbilo callejero. El Gobierno chileno protestó ante el Reino Unido.

Páginas 2 a 4 / Editorial en la página 14

Dopaje libre en farmacia español

La EPO, el fármaco cación llevó en Francia a médicos y ciclistas, mente en las farmacias, según ha comprobado más famoso estimulante sin control puede causar sólo se debe administrar a pitales, y está prohibido incluso con receta.

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ICJ St

Universal Declaration of Human Rights

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

World War I reparations

Article [Talk](#)

From Wikipedia, the free encyclopedia

Following their defeat in [World War I](#), the [Central Powers](#) agreed to pay [war reparations](#) to the [Allied Powers](#). Each defeated power was required to make payments in either cash or kind. Because of the financial situation in [Austria](#), [Hungary](#), and [Turkey](#) after the war, few to no reparations were paid and the requirements for reparations were cancelled. [Bulgaria](#), having paid only a fraction of what was required, saw its reparation figure reduced and then cancelled. Historians have recognized the [German](#) requirement to pay reparations as the "chief battleground of the post-war era" and "the focus of the power struggle between [France](#) and Germany over whether the Versailles Treaty was to be enforced or revised."^[1]

IS A VIRTUOUS MODEL OF REPARATION EMERGING IN CHILE?

30 AUGUST 2022 | BY MARIT DE HAAN FOR JUSTICE INFO

In Chile, a recent move from the new government on reparation for victims of human rights violations committed during the 2019 uprising could trigger and expresses a radical shift of policy in dealing with human rights violations, and an opportunity to revisit the unfulfilled demands of survivors of the dictatorship, argues the author.

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Poland: Tough Lustration Law Divides Society



epa

Warsaw Archbishop Stanislaw Wielgus was the first major figure to fall victim to the law (file photo) (epa) March 23, 2007 (RFE/RL) -- A controversial law went into effect in Poland this month that goes further than anything similar in the region, requiring hundreds of thousands of citizens in positions of authority, including academics, journalists, teachers, and state company executives, to declare in writing whether they cooperated with the communist secret services -- or risk losing their jobs.

Related



Polish Archbishop Resigns
Amid Spying Allegations



Romanian President Says
Communist Regime

Lustrations



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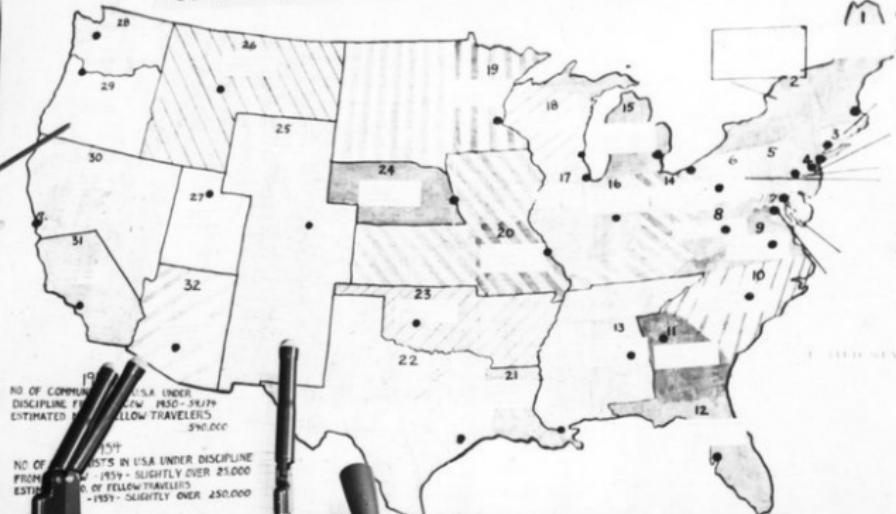
Comisión Provincial Depuradora del Magisterio

Como Presidente de esta Comisión, creada por el Decreto número 66 y Orden de 10 de Noviembre último, ambas disposiciones insertas en el Boletín Oficial del Estado, del 11 del mismo mes, requiero a V. S. para que en el preciso término de ocho días, se sirva informar a esta Comisión acerca de los siguientes extremos, relativos a maestro D. José Ballota Romano de la escuela de Rauros Pinto en ese municipio que en 18 de Julio último estaba al frente de su cargo.

1.º Conducta profesional, es decir: si asiste puntualmente a la Escuela. Si desarrolla en ella la actividad exigible a un buen Maestro. Si sus alumnos adelantan en instrucción y educación. Si las enseñanzas que da se inspiran en los dictados de un fervoroso amor a España. Si inculcaba o inculca a sus alumnos el respeto a las Instituciones básicas de nuestra civilización, tales como la Patria, la familia, la propiedad, la jerarquía de las clases sociales, etc. Si se mostraba y se muestra hostil a ellas o indiferente. Si hacía labor antirreligiosa, etc.

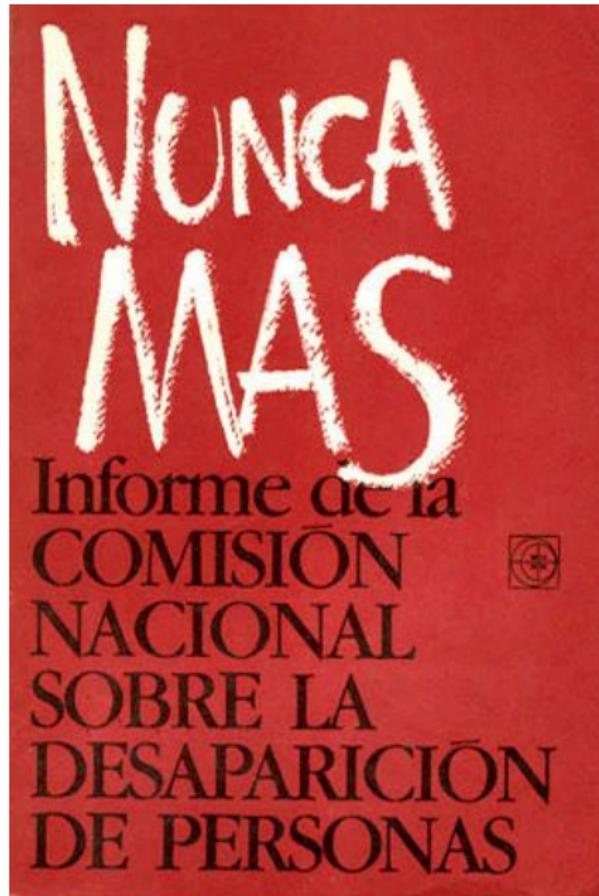
2.º Conducta social, esto es, fuera de la Escuela, en su vida de relación. Si daba buen ejemplo público o malo. Si asistía a Centros o reuniones, cuya frecuentación podía desprestigarle. Si se relacionaba o relaciona con elementos socialmente sanos,

COMMUNIST PARTY ORGANIZATION U.S.A.-FEB. 9, 1950

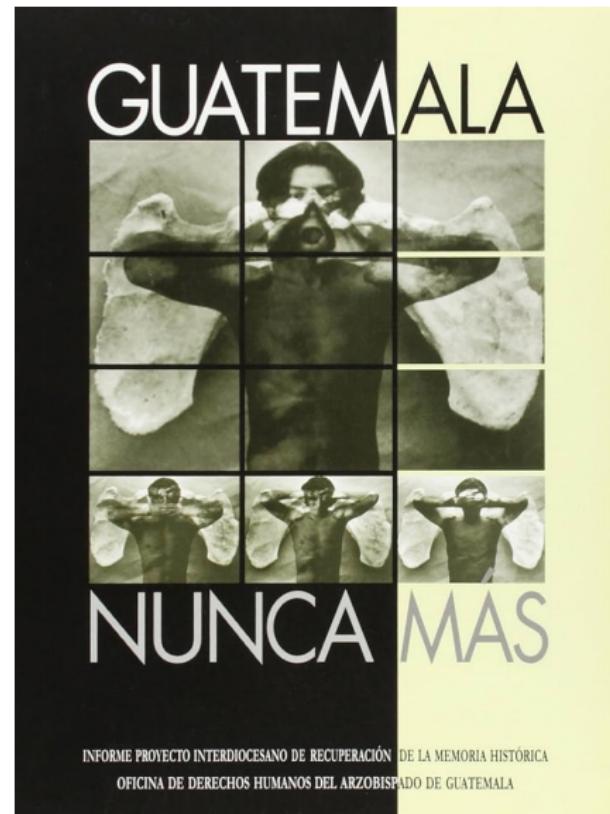


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Argentina (1984)



Guatemala (1998)

TRUTH AND RECONCILIATION COMMISSION

HEALING OUR PAST

FIRST HEARING - EAST LONDON 15 - 18 APRIL 1996





[Inicio](#) > [Memoria Democrática](#) > [Localización de personas desaparecidas](#)

Buscador de víctimas

[Buscador de fosas](#)

[Buscador georreferenciado](#)

*Introducir por lo menos un criterio de búsqueda(Nombre, primer apellido, segundo apellido de la víctima o datos de ubicación de la fosa)

Nombre

Nombre

Primer apellido

Primer apellido

Segundo apellido

Segundo apellido

Fosa de inhumación

Comunidad autónoma

(todas)

Provincia

(todas)

Localidad

Localidad

Buscar

Borrar

Buscador de mapa de fosas georreferenciado

Mapa de fosas



Listado



Modo accesible



Búsqueda

Información de la fosa	
Número de registro	1532/2009 ASTU
Comunidad autónoma	Principado de Asturias
Provincia	Asturias
Localidad	Villaviciosa
Coordinadas	43.4365238, -5.5055466 (Ubicación no precisa)
Denominación	Fosa de Valdedios
Estado de la fosa	EXHUMADA TOTAL
Tipo de fosa	EJECUCIONES EXTRAJUDICIALES
Estado actual	10

Descripción
No intervenida
Desaparecida
Exhumada parcial
Exhumada total
Trasladada al valle de los caídos
No especificado



© Gobierno de España © Instituto Geográfico Nacional

Aviso legal

Bringing justice to victims worldwide, one bone fragment at a time

A documentary on the creation of the world-renowned Argentina Forensic Anthropology Team is now streaming on PBS



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Spain exhumes Franco's body, ending long legal battle

Transfer of ex-dictator's remains hailed 'victory for democracy' but rightwing critics slam decision

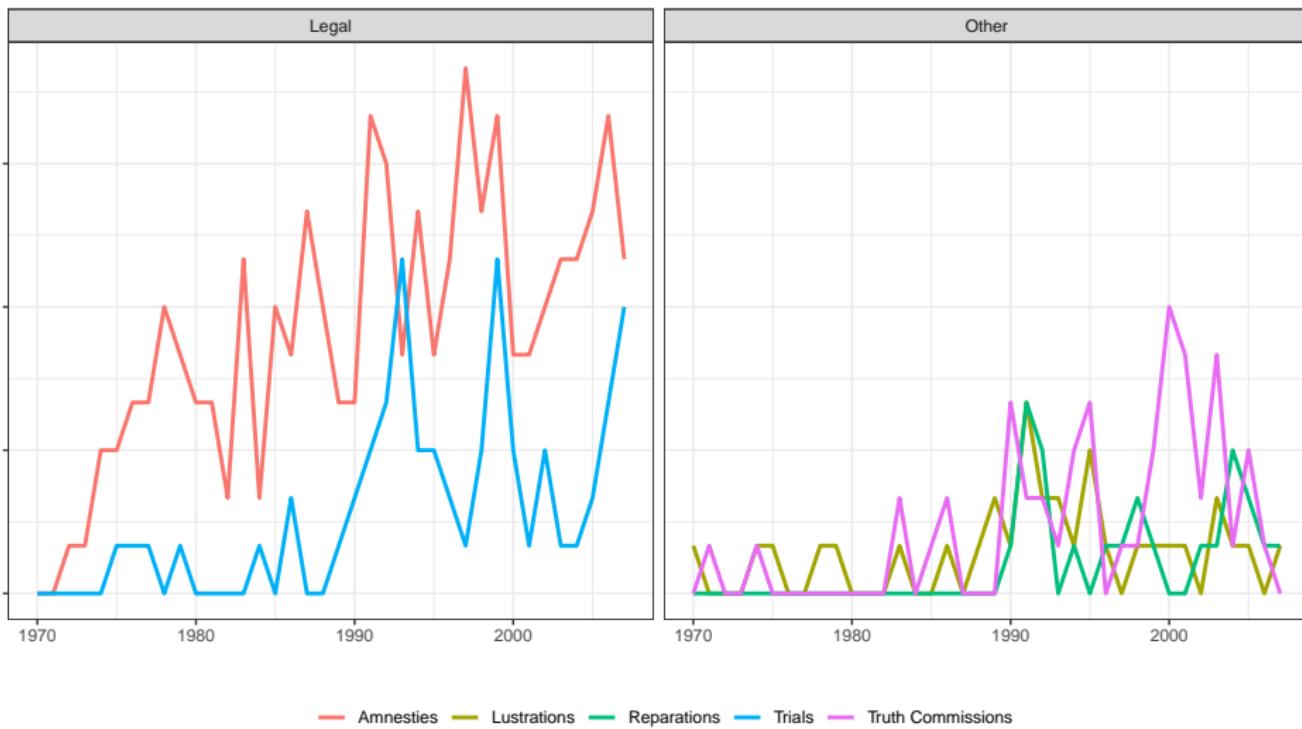


Franco's grandsons and other family members carry the coffin of the former Spanish dictator after his exhumation at the Valley of the Fallen basilica near Madrid on Thursday © EPA/Shutterstock

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Number of countries using each TJ mechanism
(Olsen et al. 2010 data)



Questions

- The causes of TJ policies
 - emergence of human rights *norms*: how and why?
 - determinants of domestic policies: what explains that some countries apply them?
 - can we promote human rights?
- The consequences
 - what are the consequences at the elite-level?
 - do they have an effect beyond one particular country?
 - effects at the *micro*-level? (reconciliation, etc)

TJ and human rights

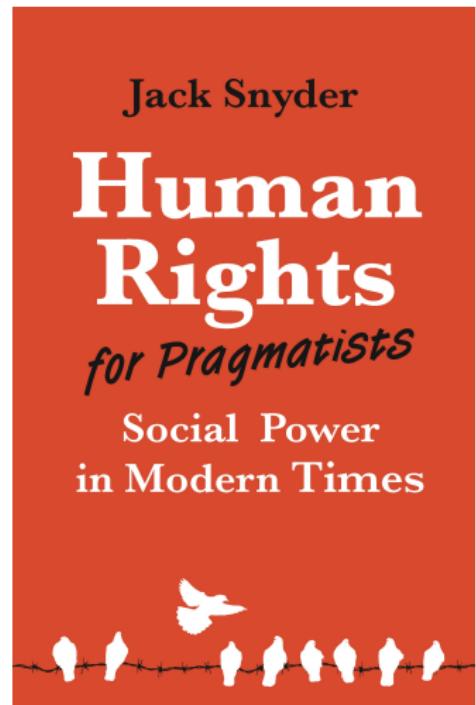
- Why do we observe Transitional Justice policies?
 - especially, why do we observe *domestic* prosecutions?
- This is a debate related to the emergence of **human rights**

How did human rights develop?

- We live in a world where human rights are the **norm**
- But it was not always like that (Salamanca, Enlightenment, post-WWII...)
- **How and why did we get here?**
 - What is the process that explains the expansion of human rights norms and institutions to enforce them, both at the domestic and international level?
 - Why this is important: can we actually *promote* human rights?

Power leads, rights follow

- Human rights are all about liberal modernity
- Only when **middle classes** emerge and become strong, forming **winning coalitions**
 - Historical role of the emergence of a trading class in Northern Europe and Protestant Reformation
 - Setbacks during the 20th Century
- **Liberal** and **realist** theories of HR?



Jack Snyder (2022)

Snyder's theses

1. HR are *beneficial* for modern economic production and governance
 - vs. tradition based on favoritism and patronage
2. HR prevail when the ruling coalition benefits from them
 - if there is a winning coalition *against* them, HR no longer in place
3. The process depends on the creation of impartial institutions
 - it doesn't work if HR are just norms that go unheeded
4. Promotion as part of an ideology and culture
 - vs. persuasion → institutionalization
5. This is all a gradual process
 - there are no short-cuts

Snyder's pragmatist approach

- Ideas about this argument?
- According to it, how can we promote human rights internationally?
And what are the odds that we'll be successful?
- What does this mean for TJ policies?

International norms and political change (Finnemore & Sikkink 1998)

- Importance of *norms* and the way they **change**
 - Norms are not the opposite of strategic rationality
- Examples of international norms:
 - women's suffrage, laws of war, etc
- How do wars emerge and evolve? Three phases
 1. Norm emergence (role of *norm entrepreneurs*)
 2. Norm cascade (*imitation dynamics*)
 3. Internalization

The Justice Cascade

- Development of **HR accountability** norm at the international level
 - individuals should be accountable to their actions in legal criminal courts
- Individual criminal accountability, vs:
 - Amnesty
 - State accountability
- Spread of domestic, foreign, and international courts - and the legal backbone
- Role of **individual actors**: activists, lawyers, NGOs, etc

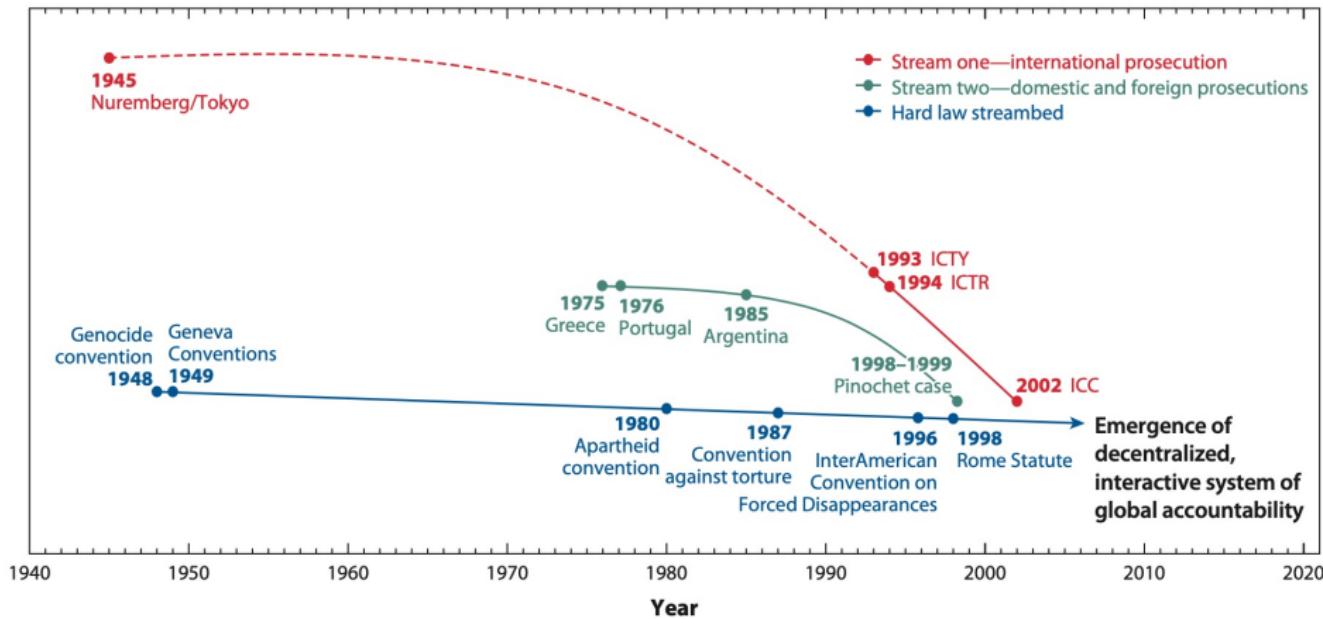
THE JUSTICE CASCADE



HOW HUMAN RIGHTS PROSECUTIONS
ARE CHANGING WORLD POLITICS

KATHRYN SIKKINK

Kathryn Sikkink (2011)



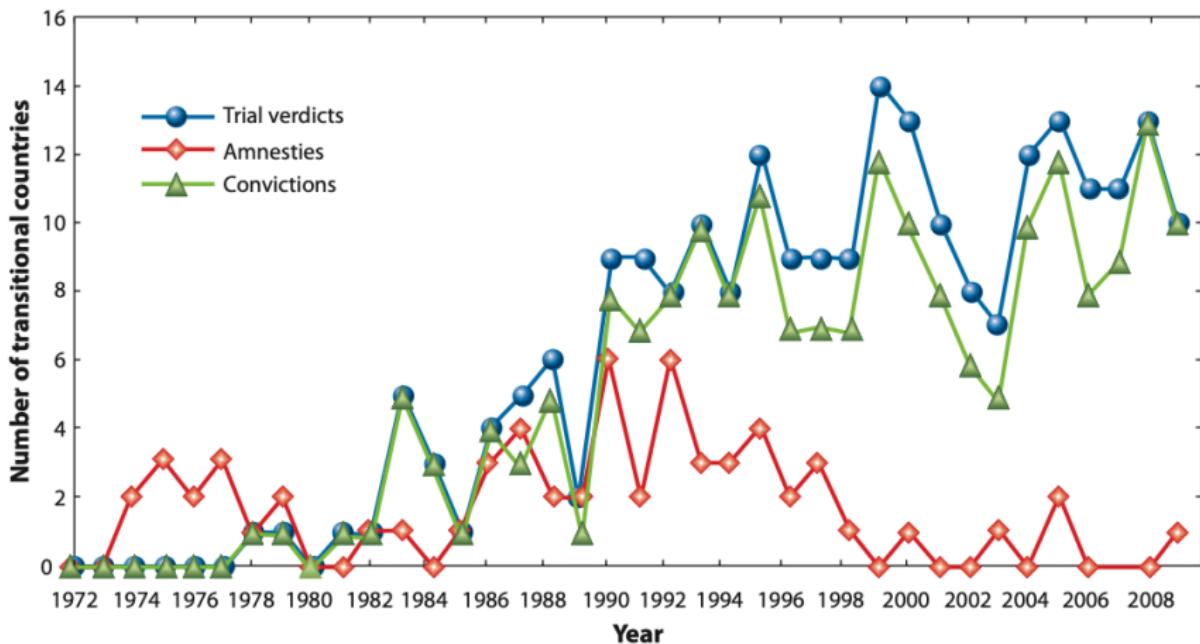


Figure 1

Trends in domestic prosecutions of human rights violations and amnesty laws, 1979–2009. The lines represent the number of countries in any given year adopting new amnesty laws (*red*) or reaching a verdict (*blue*) or a conviction (*green*) in a prosecution for human rights violations.

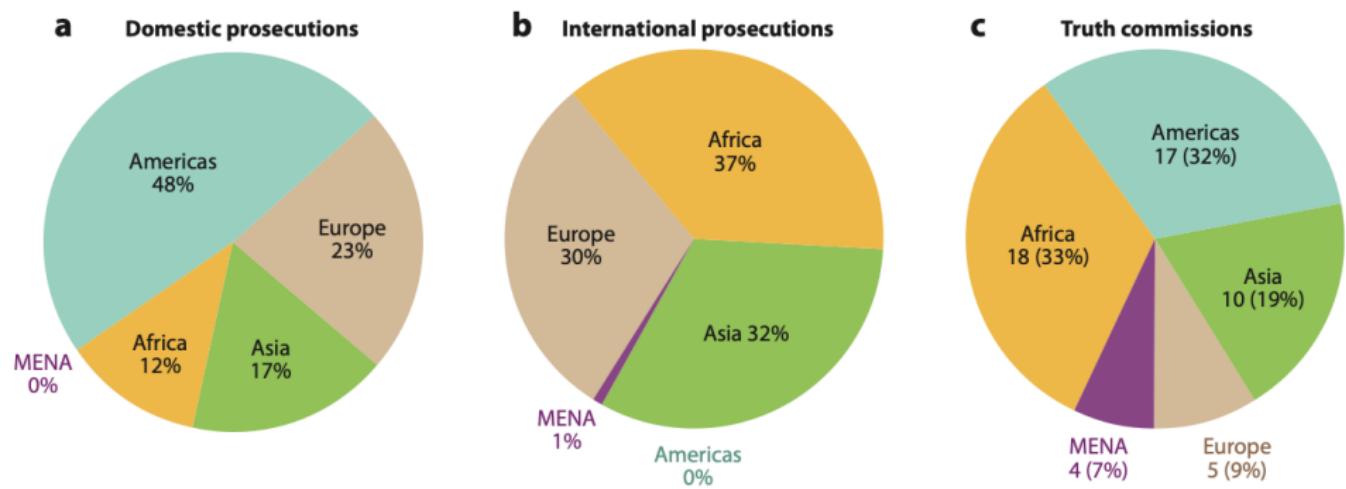


Figure 2

Regional distribution of prosecutions of human rights violations, 1979–2009: (a) domestic transitional prosecutions, (b) international human rights prosecutions, and (c) number (and%) of truth commissions by region. Abbreviation: MENA, Middle East and North Africa. (Trials are included as long as they began within the stated time period.)

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