

Evening the Score: Layered Legacies of the Interregnum

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ABSTRACT

Este ensayo analiza en qué forma los gobiernos interinos determinan los reajustes psicológicos e institucionales del estado y la sociedad posteriores a las transiciones de gobierno. El trabajo demuestra cómo distintos tipos de gobiernos interinos influyen en qué momento, con qué método y cuáles parámetros se encaran los abusos a los derechos humanos cometidos por los regímenes precedentes, y las actitudes de la sociedad hacia las ideas democráticas liberales y el estado de derecho. La conducta de los gobiernos interinos puede determinar hasta qué punto lograrán los nuevos regímenes minimalizar la violencia, desviando la disensión por vías legales de resolución de conflictos, estableciendo la responsabilidad de los nuevos gobiernos y de sus órganos, propagando una cultura de respeto a los derechos humanos, fomentando la reconciliación por encima de la fragmentación, y subordinando a los militares y las fuerzas de seguridad¹.

Among the most difficult issues confronting nascent democracies is how to address the societal legacies, including human rights violations, committed by predecessor regimes. Many new governments were preceded by regimes responsible for exceptionally brutal behavior — national genocide as in Cambodia or wide-scale forced “*disappearances*,” political killings, and severe torture as in Argentina’s “*dirty war*” and, to a lesser extent, in other Latin American military dictatorships such as Uruguay, Chile, and Brazil. In the new democracies of Eastern Europe and the former Soviet Union, the violation of human rights by the predecessor totalitarian and post-totalitarian regimes

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included, in addition to the above atrocities, the systematic and long-term wholesale destruction of the social, economic, and moral fabric. For such societies, eradicating the legacies of Communist rule involves the metamorphosis of the state, the society, and the individual. In less-developed countries formerly governed by personal, arbitrary rule, the emergence of new democracies may require the wholesale renovation of state institutions and the issue of evening the score, and it may even necessitate the recovery of the country's stolen wealth.

No doubt, the questions of whether and how the abuses of the old regime should be treated have become among the most pressing and anguishing subjects confronting new democratic societies.² Clearly, this is not the first time in our century that high moral issues have dominated the world's attention. The settling of accounts with Nazism and fascism in the post-World War II world was a signpost on the long, unfinished, and perhaps unfinishable, road to the establishment of a liberal, democratic world order. The Nuremberg trials and the Tokyo war crimes trials were seminal events "*in establishing the principle that gross violations of human rights must be punished and that the society must be cleansed and restored to decency.*"³

Yet, the initial post-War struggle to eradicate the legacies of dictatorship and inhumanity stopped short as the Western powers had to contend with the transformation of the eastern liberators into villains; that transformation, which ushered in the Cold War, prompted them to support "friendly tyrants." It is only now, when the idea of liberal democracy has emerged triumphant over communism and authoritarianism, that there is a new emphasis on human rights and their transformation from generally nebulous political rhetoric to more concrete moral codes. However, achieving congruence between the practice of democracy and the moral renewal of state and society poses a complex conundrum of politics, legality, and morality. The last of these elements is especially complicated because of the ease with which it is possible to transgress the razor-thin line between justice and injustice. The difficulty of moving from the extreme and widespread abuse of human rights to the "*sphere of justice*" is compounded by the time factor. It is not always clear whether quick moves or delayed reactions on the part of state and society will best serve the interests of the emergent democratic polity. In fact, at times it may seem that morality and politics are irreconcilable. One may expect democracies which arose from comparable types of predecessor regimes to respond similarly to legacies of past abuses and, in fact, many of them seem to do so. For example, there have been investigatory reports of crimes committed by bureaucratic authoritarian regimes in Latin America, screening and lustration laws in Czechoslovakia and Hungary, and investigations of military crimes in the Philippines and Korea. In reality, however, closer scrutiny reveals that these apparent similarities are superficial rather than profound. As Samuel Huntington has rightly observed, responses are often influenced more by the

nature of the democratization and the distribution of power within the government leading the transition than by the character of the previous regimes or the desire to even the score.⁴

This essay examines how interim governments, during their time in power, set the tone for the psychological and institutional rearrangement of state and society that will follow under the new regimes. As will become evident, interim governments influence the timing, method, and parameters of the treatment of human rights abuses committed by predecessor regimes and societal attitudes towards liberal-democratic ideas of justice and the rule of law. The behavior of the transitional governments may define how successful the new regimes will be in minimizing violence by channelling dissent into legally-accepted means of dispute resolution, establishing the accountability of the new governments and their organs, propounding a culture of human rights, fostering reconciliation rather than fragmentation, and subordinating the military and security forces. Examples will be drawn from historic and contemporary cases, some of which are yet to be resolved.

The term "*transition*" in democratic regime change has come to denote an undefined period in the interval between "*the launching of the process of dissolution of an authoritarian regime,*" at one end of the spectrum, and "*the installation of some form of democracy, or the return to some form of authoritarian rule, or the emergence of a revolutionary alternative,*" at the other.⁵ Within this period of incremental changes and qualitative alterations in the old political regime, there exists a more defined interlude characterized by the rule of an interim government that has committed itself rhetorically to hold free and competitive elections of one sort or another within a relatively short span of time.⁶ The interim government's drive, or reluctance, to undertake domestic and foreign policy initiatives and its predisposition (and competence) to fashion a succession based either on some degree of continuity with, or a complete repudiation of the past may subsequently inhibit or reinforce its successor's or its own later character and conduct with regard to a variety of issues. This is especially relevant to the problem of evening the score.

Of course, not all cases of authoritarian breakdown are followed by transitions to democratic systems; despotic regimes are often replaced by other nondemocratic governments. However, in our era, when democracy has emerged as the highest moral principle in justifying political power and when competing ideologies such as Communism and authoritarian Third-Worldism are disintegrating, the rhetoric of most contestants for power who struggle to overthrow a nondemocratic regime is democratic;⁷ they all try to establish a democratic popular image of legitimate rule by holding at least nominal elections and granting, at a minimum, a ritualistic vote to the citizens.⁸ In this context, all of them must address — by choice or by yielding to domestic or foreign pressure — the legacies of the past, though their behavior may not always be conducive to or consonant with fostering the proclaimed new ethos of democracy and justice.

The fact that a government has declared itself provisional, interim, or transitional (or uses another similar appellation) is an indication that it chooses, rhetorically at least, not to translate its *de facto* control to *de jure* power “because the legitimating myth it invokes in order to pretend to power involves the performance of certain principles and procedures which have not yet been completed.”⁹ Key among these principles is “moral renewal,” which may not always coincide with the requirements of a democratic polity and which, indeed, may often preempt future democratic practices. As never before, it is ironic that, today, in order to justify their non-democratic conduct, even self-proclaimed interim authorities that captured power by ousting a democratically-elected government, or by intervening to thwart a democratic transition, resort to the rhetoric of human rights and the rule of law. In Haiti, for example, the military coup that ousted President Jean-Bertrand Aristide in September 1991 was carried out in the name of restoring human rights. The coup leaders declared themselves a provisional government, forced at gunpoint the appointment of Haiti’s Supreme Court Chief Justice as provisional president, and declared elections within ninety days. Father Aristide would be barred from the elections under a constitutional provision preventing a president from succeeding himself.¹⁰ In Algeria, the military that intervened to halt the country’s first democratic elections in January 1992 declared its interim rule to be a protection against the ascendance of the Islamic fundamentalists, who would most certainly suspend democratic practices and civil liberties.¹¹

In our time, self-declared interim governments usually pledge their allegiance to “*democracy*,” an allegiance which is to be validated by elections. The exit from provisionality is tested in the fulfillment of the promise to hold free and contested elections to resolve questions of conditional and temporary legitimacy. Unlike caretaker governments in parliamentary democracies, i.e., governments that lose their mandate in a vote of no-confidence, or following their voluntary resignation, but which “continue to act under a special commission given by the [democratic] law itself,”¹² interim governments that promise transition from dictatorship to democracy have no politically-defined rules to fall back upon, and must devise guidelines and jurisdiction for themselves, some of which may derive from the old notions of legality. However, as long as such governments do not organize as a contending party and win a mandate in free and fair elections, they have no democratic legitimacy.¹³

While in power, interim governments of the incumbents, the opposition, or a combination of both can claim to represent the people, but, until the electoral process is completed, that claim has no democratic validity and may well be rejected. This point must be borne in mind because, although there may be an apparent necessity to expedite the evening of the score, such haste may interfere with the idea of the uncertainty of the outcome of political decision-making which lies at the heart of democratic rule. It is, therefore, incumbent

upon those trying to devise viable solutions to examine carefully who governs in the interim period and how their rule affects what is done with regard to human rights issues.

Clearly, interim governments affect the constitutional framework and the nature of the future political system (parliamentary, presidential, constitutional monarchy, or *gouvernement d'Assemblée*); the degree of political openness in the future democracy; the nature of the economy (capitalist or socialist); the role of the bureaucracy, especially the position of the armed forces, in the new society; and the country's future international posture and alliances. At least the first four categories are intimately connected with respect for human rights and willingness to address the legacies of the old regime. The origin and composition of interim governments, and the political tactics they adopt, profoundly affect the outcome of the transitional process and may determine the scope of future treatment of past violations.

Based on historical and recent regime transitions, at least three ideal types of interim government are discernible.¹⁴ First, there are provisional revolutionary governments which arise after the fall of the *ancien regime*, either through internal revolution or as a result of a war that leads to the ouster of the previous regime; second, there are power-sharing governments in which an incumbent authoritarian regime and the democratic opposition share executive power temporarily before elections; and third, there are incumbent caretaker governments in which members of the outgoing élite manage the transition until the transfer of power to a democratically-elected government or, alternatively, another non-democratic regime.¹⁵ Each of these models exhibits certain tendencies in treating real or alleged human rights abuses by the outgoing regime, which itself may have a strong foothold in the new democracy.¹⁶

Provisional Governments and Revolutionary Legacies

When a regime has been superseded in a revolutionary struggle, often violent, or a coup d'état, the new ruling élite, claiming to break completely with the regime which it deposed, usually declares itself a provisional government, thereby indicating, at least rhetorically, both its intention to have short-lived control and its commitment to a democratic transition via free elections. The difficulties that beset provisional revolutionary governments that have established themselves in complete discontinuity with their predecessors are manifold. Although they define themselves as "*democratic*," they have no democratic legitimacy since the electorate has not yet had the opportunity offered by free elections to support or reject their claim to power. Moreover, they do not enjoy the same advantages of "*legality*" as do authorities inheriting an old normative framework, whatever their legitimacy for a large segment of the population. They usually rule by decree and, even if they wish to adhere

temporarily to the old legality to avert a situation of anarchy, or even to further their own interests, the revolutionary fervor, the discrediting of the old state mechanisms, and the possible emergence of competing centers of power are likely to jeopardize such legal continuity.

Once in power, provisional revolutionary governments are often loath to relinquish authority. They frequently claim a popular mandate that is expressed through spontaneous or rehearsed mass demonstrations, popular organization and mobilization, staged plebiscites, or other forms of populist legitimacy. Often, they make vague promises to hold free elections that never occur, enact constitutional reforms in order to perpetuate themselves in power before democratic elections are held, or manipulate election results to ensure their own victory, as happened in Romania in December 1989, when Nicolae Ceaucescu's downfall brought to power the former Communist Ion Iliescu as the head of the National Salvation Front (FSN).

The FSN, a self-proclaimed provisional government that promised "a complete and irreversible break with the Communist system and ideology," a market economy, and political pluralism, in fact hijacked a grassroots, anti-Communist, pro-Western revolution to stage a coup d'état of disenchanting party apparatchiks, top *Securitate* (secret police) officials, and some army generals.¹⁷ The Romanian revolution and the ensuing ascendance of a provisional government, in contrast to the more peaceful, negotiated transitions in East Central Europe that resulted in the formation of power-sharing interim coalitions, may be attributed in large part to the "totalitarian-sultanistic" character of the Ceaucescu regime, which, according to Juan Linz, "leaves a vacuum in a society that makes the establishment and consolidation of democratic politics extremely difficult."¹⁸ Regardless, to date most observers agree that Iliescu's rise to power and the FSN's hegemony were not manifestations of popular will but the result of the general confusion that followed the collapse of the old regime.

The democratic opposition contested the FSN's monopoly over policy-making during the interim period and denounced the use of intimidation and violence to derail the transition to a competitive system. It protested the forcing of a close target date for elections which left no time for the new parties to gather strength and experience. The FSN's astonishing receipt of 85% of the vote in Romania's first free presidential elections since 1937, which the opposition declared rigged, and the fact that the new administration resorted to brutal means to crush anti-government protesters shortly after the elections, further eroded the legitimacy of the new system. It reopened the sores of the December 1989 uprising and led to international condemnation and sanctions by Western democracies.¹⁹

In the short time before the first elections, the FSN disbanded the *Securitate* and established a new secret service, the Romanian Intelligence Services (RIS). Despite the cathartic execution of the Ceaucescu on December 24 on charges of genocide, the imprisonment of their children, and subsequent token trials of

Securitate leaders, opposition activists alleged that a high proportion of secret policemen with shadowy pasts were simply absorbed into government agencies, the armed forces, and the revamped services.²⁰ By mid-1992, the *Securitate* files remained unopened.²¹ In fact, the pattern of summary trials followed by quick executions of the old leaders, which typifies many revolutionary situations, tends to leave a suspicion of a cover-up contrived to conceal early collaboration between elements of the revolutionary core and the outgoing regime.²²

After the Second World War, as the colonial empires were dismantled, the ideologies of national self-determination and Marxist revolution, coupled with the rhetoric of eradicating “*fascist*” right-wing regimes²³ became prominent. These ideologies opened the door for manipulation of the “*democratic fallacy*,” i.e. that popular participation, and not free and contested elections, is the essence of democratic government. This manipulation led to abuses of democratic principles by provisional revolutionary governments which, despite their early rhetorical commitment to democracy, consolidated their power in nondemocratic ways while lionizing their adherence to self-determination, an egalitarian society at home, and solidarity with other revolutionary movements.

Provisional revolutionary governments claiming to be imbued with popular legitimacy reflected in mass mobilization might be tempted to use the interim period before elections to enact major political, social, and economic policies without waiting for the electorate to give its representatives the power to approve them, thereby, in fact, preempting the future decision of the people. Such reforms would not be democratic, although they might be desirable and find widespread approval. They are likely to be enacted hastily on the basis of inadequate analysis of problems and to alienate many of those who are ready to support the new regime. Moreover, the government may be tempted to displace whole social groups from positions of power and influence, and exclude them from political participation, even if they were disposed to play by the rules of the democratic game. The idea of “*a democracy for the democrats*,” rather than for all the people, thus begins to assert itself. The difficulties such regimes, which are very often without experience, face in governing, the problems generated by a sudden transition, the active opposition encountered, and the discovery that the people are not so unqualifiedly supportive of the new rulers as they appeared to be during the struggle for democracy, all lead to a sense of frustration and the temptation to carry out social and political reforms before the people are allowed to vote.²⁴

Famous examples of provisional revolutionary governments that failed to live up to their democratic pledge include Castro’s provisional administration following the removal of Batista’s dictatorship and the Sandinistas’ “*social democratic*” regime. In their revolutionary fervor, both employed summary justice and held ‘show trials’ to cleanse the society. The Nicaraguan provisional government, known as the Governing Junta of National Reconstruction

(JGRN), that emerged after the Sandinista victory in 1979, was a government of national unity composed of a broad array of anti-Somoza groups. Despite its members' pledge to implement "*political pluralism*" and a "*mixed economy*," the JGRN, which was, from the outset, dominated by the National Directorate of the Sandinista National Liberation Front (FSLN), decided to postpone elections until 1985, emphasizing that, "for a Sandinista, for a revolutionary" democracy means "PARTICIPATION of the people' in the entire range of the nation's affairs."²⁵

The Marxist revolutionary character of the Sandinistas also manifested itself in the way in which they treated their opponents. After the Sandinistas came to power in 1979, thousands of Nicaraguans who had been involved with the predecessor regime's National Guard, or who were thought to have engaged in counterrevolutionary activities, were tried summarily and imprisoned. In 1983, the Sandinistas formed the Popular Anti-Somozista Tribunals (TPAs). These prosecuted those suspected of counterrevolutionary behavior while downplaying the defendants' rights under the guise of purging the immediate danger to the revolution. Despite domestic and international criticism that the TPAs system violated the "*universal principle of equal justice*," the Sandinistas insisted that it was a mechanism vital to the enforcement of the "*principles of the revolution*."²⁶

Portugal is an unusual example of a country that became democratic after a coup turned into a revolution, although, as a student of Portuguese politics has pointed out, the coup could easily have "*resulted in another authoritarian regime of the Left or the Right under either civil or military control*."²⁷ It is especially remarkable that Portuguese democracy emerged after six successive provisional revolutionary governments subscribed to rule by decree and other policies which were antagonistic to respect for human rights. The six provisional governments that followed the *putsch* were mostly dominated by left-leaning revolutionaries who favored implementing a radical agenda over creating an accountable elected government. Indeed, by the end of the first year of the revolution, the policies of the provisional governments began to reflect the desires of Communists and/or radical military personnel.²⁸

After President Spínola resigned in October 1974, a Marxist takeover seemed inevitable.²⁹ The Armed Forces Movement (MFA), controlled by Marxists and military left-wingers, adopted a revolutionary course of economic nationalization. It seized huge areas of land, detained several thousand people without trial, purged the secret police, and controlled the media, all before the first free elections.³⁰ Despite these revolutionary methods, the MFA's initial commitment to hold elections for a constituent assembly one year after the coup, and the insistence of moderate forces within the MFA that the promise be adhered to, as well as the threat by the Western powers and NATO that they would enact economic sanctions in the event of a nondemocratic outcome, helped halt the process of radicalization.³¹

Portugal's redemocratization, the first democratic transition in Southern

Europe in the 1970s, was, in many respects, the ripple that preceded the tide of the “*third wave*” of democratic revolutions that has swept the globe in the last decade. This global triumph of liberal-democratic philosophy over rival ideologies, primarily Marxism-Leninism, coupled with the pressing need to internationalize their economies, forced many Communist and Third World countries to choose between democratization and political and economic collapse. This new situation makes it more difficult, although by no means impossible, for provisional governments to attenuate their initial democratic promise to uphold human and political rights by appealing to other ideological commitments. Hence, even in the case of post-revolutionary Romania, where Ceaucescu’s former allies exploited a power vacuum to stage a highly suspect transition, it is important to recall that the FSN made some substantial concessions to the revived opposition parties. It accepted their participation in the interim assembly, gave in to pressure to negotiate an electoral law that had been simply decreed, and kept its promise to hold elections. As part of its attempt to project a democratic image, the Romanian provisional government even went through the motions of paying compensation to the families of the victims of the Timisoara massacre.³²

Many provisional revolutionary governments have used their power to eliminate old rivals under the label of an anti-corruption cleansing campaign, thus preventing the emergence of competing parties. Even when they were initially well-intentioned in their desire to effect a liberal democratic regime change, provisional revolutionary governments were often unable to institute reforms that enjoyed widespread popularity because they could not unite opposing factions with conflicting desiderata and, as a result, were faced with institutional paralysis. Most vulnerable were “*true believers*” in liberal democracy who, while in power, found themselves obliged to uphold the rights of extremists and refrain from suppressing their enemies in order to escape any association with the practices of authoritarianism. This syndrome, characterized by Crane Brinton as the “*weakness of the moderates*,” was a major factor in the failure of Kerensky’s provisional government to overcome the Bolsheviks’ challenge in 1917.³³

No doubt, Kerensky’s inability to unite the Russians behind his rule is an excellent example of a genuine provisional government whose failure to lead a democratic transition in Russia profoundly altered the course of this century. The coup d’état of the Duma, in February 1917, brought to power the provisional government of Lvov and Kerensky that vowed and, indeed, in its first months in office, moved to transform Russia into a democratic polity based on liberal principles. Yet, from the outset, the provisional government enjoyed only the conditional support of the Soviet of Workers and, in fact, remained powerless within the system of dual power (*dvoevlastie*).³⁴ The fact that Kerensky hesitated to suppress his rivals “*undemocratically*” was exploited by them to overthrow him. Ironically, to some extent, the freedom Kerensky accorded them was, ultimately, his undoing.

Similarly, in Iran, the aftermath of the February 1979 revolution was characterized by diffusion of power and the victory of the Islamic extremists over the moderates. Initially, the Ayatollah Khomeini appointed the moderate Mehdi Bazargan as an interim prime minister and called on him "to form the provisional government independently of your connections to a political party or to any other group, so that you can arrange for the administration of the country, organize a referendum concerning the establishment of an Islamic Republic, call a constitutional assembly composed of the people's elected representatives to ratify the constitution of the new political system, and organize parliamentary elections based on the new constitution."³⁵ Yet, while officially endorsing Bazargan, Khomeini encouraged a parallel government of revolutionary committees, courts and guard. Hence, Bazargan's provisional government, which did not include clerics, was *de facto* subordinated to a Revolutionary Council dominated by them. Bazargan himself remained committed to his vision of a "*democratic Islamic Republic*," but had no power to bring under his government's control the revolutionary tribunals which condemned and shot real and putative officials from the Shah's regime and "*corrupt individuals*." Despite the support of the masses for the tribunals, Bazargan appealed to the people to be reasonable, patient, and forgiving, but to no avail. Bazargan's followers among the middle class and the intelligentsia failed to read the writing on the wall when Khomeini persistently excluded any reference to democracy. Bazargan finally succumbed to the terror and manipulation of the Islamic forces and, on November 4, 1979, after the takeover of the American Embassy, his government collapsed in a clerical coup known as "*The Second Islamic Revolution*."³⁶

As Houchang Chehabi, a scholar of Iranian politics, has pointed out in his analysis of Bazargan's failure, the predicament of provisional governments is often complicated by the contradiction between their promise to serve in a transitional capacity, with no authority to undertake major projects or make major decisions before elections are held, and the popular expectations and pressures that they will right all wrongs and deliver immediate improvements.³⁷ This pressure often calls for revenge and summary justice. Hence, a provisional government may need strong and committed democrats who can resist the temptation to yield to popular pressure but who, at the same time, are strong enough not to be swept from power. In the case of Kerensky's Russia, as Hough and Fainsod have observed, the leaders of the provisional government "thought that their major mandate was limited to the calling of a constitutional assembly... and that only the democratically elected institutions that would emerge under the new constitution could appropriately introduce major policy change. In principle, it was an admirable decision; in practice, the question was whether the population was in a mood to wait."³⁸

Impatience with the tedium of complying with democratic norms and legal procedures is even more intense after a war, when the impetus for evening the score with collaborators and those responsible for the institutionalization of

authoritarianism is particularly acute. When transitions to democracy are launched following an external takeover by democratic countries, as happened at the end of the Second World War, postwar provisional governments are most likely to be dominated by indigenous or exiled resistance leaders, or, as in the case of Austria, by a native élite with no underground credentials, but also without an incriminating record of dictatorial practices and collaboration.³⁹ The obstacles facing post-war provisional governments in leading a democratic regime change are similar to the concerns confronting provisional élites that assumed power in a revolutionary struggle without such foreign intervention. They must contend with the legacies of the occupation and its proxies, resettle refugees, work to generate national solidarity and establish the foundation for a cohesive military force, enforce law and order, eliminate multiple power bases, reconstruct the political and economic systems, determine future international alliances, and deal with the issues of collaboration and trials.

The scope and the intensity of political purges by post-War provisional governments in Europe were affected by the presence of the Allied forces. Italy's *defascistization* after the liberation of Rome, in June 1944, was initiated by the Combined Chiefs of Staff (CCS) of the Allied Military Government of Occupied Territories (AMGOT), which ordered "the removal of fascists from the government and all positions of responsibility."⁴⁰ In France, however, where de Gaulle's Provisional Government regained sovereignty in 1945, "*there was no outside pressure for a purge.*"⁴¹ Yet, after de Gaulle reconstituted his Algiers Committee as the French Provisional Government inside France, one of his most difficult challenges was to bring the treatment of those alleged to be Vichy collaborators under his control and end the unauthorized settlement of accounts that had claimed the lives of thousands in the months following the Normandy landings. In those times of emotional ferment, de Gaulle acknowledged that ordinary legal procedures were ill-equipped to deal with and punish collaborators, though he feared that the purge might "furnish occasion for disorders that might escape governmental control and trigger revolutionary situation."⁴²

Accordingly, de Gaulle created by decree the High Court (*Haute-Cour*) to judge top-level political officials, the Law Courts for crimes of collaboration, and the Magistrates Courts for lesser cases.⁴³ The publicized trials of Marshal Petain, Laval, and Darnand, Chief of the detested Vichy Militia, were not representative. According to de Gaulle's memoirs, 10,842 Frenchmen were put to death as collaborators without regular trial, and 779 more were executed after condemnation in court. Some historians have estimated that the first number was, in fact, much higher.⁴⁴ In addition to the risks of arbitrary justice, many judges and public prosecutors were men who had themselves pledged allegiance to Petain. There were, indeed, hundreds of thousands of other officials, important and petty, who had served under Vichy, including many policemen with highly dubious records who were, without any serious inquiry into their past activities, absorbed into the new bureaucracy. Indeed, de Gaulle

did not dispense completely with the old legality or its legitimacy. Even at the height of the purge, he refused to strip Vichy soldiers of their laurels for their fight against the Allies and vindicated those who were not considered part of the collaborationist apparatus. "These people, though misguided, ...after all 'fought for France'."⁴⁵

Power-Sharing: Reconciling "Us" and "Them"

Revolutionary and post-war provisional governments must be distinguished from interim authorities which are the product of ad hoc coalitions between the democratic opposition and the outgoing regime, and from incumbent administrations (or their heirs) which have declared themselves caretakers until a democratically elected government can take charge. In general, interim governments based on power-sharing coalitions are more likely to be initiated when the period prior to their formation is not overshadowed by large scale violence and when the opposition is not dominated by an anti-democratic revolutionary élite or ideology. Such conditions permit both the opposition leaders and the incumbent élite to go beyond retribution, toward accommodation. Transitional moderation, however, may only reflect tentative political calculation and it is reasonable to expect outbursts of zeal for evening the score after the first democratic elections. For example, it is difficult to imagine that the mere fact of the recent signing by the Khmer Rouge and their power-sharing partners in Cambodia's transitional arrangement of two U.N. charters that form part of the International Bill of Rights will obviate the eventual clamor of the Cambodian people for an accounting for genocidal policies.⁴⁶

For analytical purposes, one must distinguish between interim governments based on a power-sharing formula and negotiated "*pacts*." The two differ in their objectives and scope. The term "*pact*" in the literature on regime transitions refers to a wide range of negotiated compromises among competing élites, with long-term goals of accommodating conflicts and institutionalizing the distribution of power in key areas of state and society. Such compromises may be obtained both within a power-sharing government, as well as in situations where incumbent caretaker governments lead the transition. Pacts are less likely to develop under provisional revolutionary governments.⁴⁷ Power-sharing interim governments, in contrast, are in principle short-term political arrangements between incumbents and oppositions, focusing primarily — though not exclusively — on determining the rules of and the time for the first democratic elections. In other words, the parties comprising the temporary government have come to no formal agreement that the distribution of power is permanent or legitimate, though the incumbent and, occasionally, the opposition may wish it to be so.

The negotiations leading to the formation of a power-sharing interim

government, as well as the actual functioning of such a government, impart a degree of legitimacy to the opposition, without totally discrediting the outgoing administration. In theory, power-sharing helps reconcile the “us” and the “them.”⁴⁸ In practice, such reconciliation may be temporary and occur only because of the immediate political calculations of the time, which may be altered if and when the full democratic process unfolds and elements of the incumbent regime are outmaneuvered politically and legally. Indeed, in such cases, there may be delayed reaction on the issue of evening the score. All in all, it must be remembered that even though it is authoritarian, the outgoing regime is not necessarily more villainous than some segments of the opposition which may now resort to the rhetoric of democracy, although in the past they violated such values.

This problem is particularly complex in cases of abrupt transitions from totalitarian rule, or in less developed societies where the initial distinction between the opposition and democratic forces is to a large extent misleading. Power-sharing may reduce the incumbents’ fears that they may lose everything in the transition and, at the same time, may assuage the democratic forces’ concerns that the incumbents will attempt to halt the transition and/or rig the forthcoming elections. The *sine qua non* of power-sharing governments is a balance between the degeneration of the outgoing government and the maturation and growth of other contenders for power. This balance has a powerful impact on whether and when, if ever, those controlling the new democracy will seek retribution from those responsible for the old order. A critical issue facing the democratic opposition is, therefore, whether “*the old guard [should] be treated as potential coalition partners or as criminals.*”⁴⁹

In most cases, power-sharing interim governments will be formed when the incumbent’s authority has been severely undermined, but is still sufficient to exercise control. The incumbent thus agrees to share executive power in an attempt to bolster its position and retain some power in the future democracy. The Polish transition is a classic case in which the incumbent’s expectations did not materialize. In April 1989, Round-Table talks between the government of General Wojciech Jaruzelski and Lech Walesa’s Solidarity resulted in the former’s surrender of the Communists’ monopoly over political power, and acknowledgement of the opposition as a legitimate agent of society, in return for a long-term pact that would ensure the incumbent executive’s power following semi-democratic elections. Yet, the humiliating defeat of the Communists in the June 1989 elections discredited the early agreements and forced Jaruzelski to accept the formation of Mazowiecki’s Solidarity-led coalition. In order to appease the Soviet Union, men from the outgoing regime were allocated key ministerial positions, including the Ministries of Interior, Defense, and Foreign Economic Relations. General Jaruzelski, who was elected president as part of the negotiated deal, was eventually compelled to assent to direct presidential elections earlier than originally planned.⁵⁰

The two-year transitional period during which ex-Communists dominated

Parliament and participated in government left an indelible mark on Poland's developing democracy, with particular ramifications for its ability to confront its past. Most controversial has been the Mazowiecki transitional government's policy of "burying the past and exacting no retribution from individuals for the abuses of communism, [including even] the endemic criminality-run secret police."⁵¹ Although this policy may have helped in averting a revolutionary situation, some have maintained that, in the long run, it has "contributed to the breakdown of law and order by, allowing the former police apparatus to destroy compromising evidence of its past activities" and thus left "a legacy of mistrust in the new police and security institutions as well as in the new political élite. This policy also created a sense of moral ambiguity and raised doubts about the Solidarity government's political will to enforce justice."⁵²

It was only after the first free parliamentary elections, in 1991, that the notion of evening the score began to be muted and the idea of reassessing the 1989 Round-Table agreement and Mazowiecki's "ruling off" policy began to gather momentum. However, as Anna Sabbat-Swidlicka of Radio Free Europe has pointed out, "It is a matter for political debate whether the damage would have been more or less serious if the purge had been conducted immediately after the collapse of communism. It is unlikely to make the UOP's [the Polish State Security Office] problems any easier, torn as the office is between the need to establish its credibility as a loyal and dependable guardian of state security and pressure to maintain its operational efficiency."⁵³

Occasionally, power-sharing coalitions materialize only after the demise of the outgoing regime. In such cases, the opposition's unpreparedness to assume power independently, its genuine commitment to democracy, and/or its fear of the danger of chaos as a result of a power vacuum may produce short-lived cooperation. The goal of such transitional coalitions is to avert a revolutionary situation stemming from the people's realization that the dictatorship has lost its teeth by ensuring some sort of dignified exit for the old élite, allowing parties to form in time to campaign, and ultimately coordinating the final details of transition.⁵⁴ The demise of East Germany, as well as Czechoslovakia's "*Velvet Revolution*," provide the best examples of power-sharing situations where the incumbent "had been weakened to the point of dependence on the opposition to avert its complete obliteration and to protect it from uncontrolled acts of retribution by the population."⁵⁵

To a large extent, members of the outgoing Communist regime in Czechoslovakia were spared the fate reserved for dictatorships deposed by popular revolutions, largely because of the deep commitment of opposition leaders like Vaclav Havel to human rights and their "profound belief that a future secured by violence ... would be fatally stigmatized by the very means used to secure it."⁵⁶ Notwithstanding the atypical restraint of the opposition during the revolutions in East Germany and Czechoslovakia, these "collapsed transitions," as Nicolai Hansteen has shown, had far-reaching implications for the issue of evening the score with their loathed politicians, bureaucrats, and,

in particular, secret police.⁵⁷

Giuseppe Di Palma has argued that a democratic transition has much to gain if the outgoing regime and the democratic opposition display a clear appreciation that state institutions of "*legal-rational aspiration*," such as the armed forces, judiciary, and civil service, can facilitate and are essential to democracy. This may be the case when "*past constitutional traditions*, construed the state as the impersonal carrier of specified public functions, indeed duties, in the continuous determination, allocation, and delivery of collective goods. Though the traditions may have been cast originally in an autocratic mold, though they may have assigned civil society and public opinion and narrow legal space, though they may have elevated the state and its armed forces to the role of arbiters of 'unnatural' societal conflict, they are still traditions anchored to notions of professionalism, legalism, impartiality, continuity of service and institutional autonomy from partisan politics — that is, to notions that, whether myth or substance, are central to democracy."⁵⁸

Yet, when the incumbent has been undermined to the point that it has no effective powers over the decisions of the interim government, and when state institutions have lost any perceived legitimacy in the eyes of the opposition and the public at large, the transition via the old state-legality decreases and attempts to salvage the role of the old state institutions, especially those representing the repressive nature of the regime, are highly improbable. Indeed, the collapse of the outgoing regime, even when it is still part of the interim arrangement, is likely to arouse popular demand for prompt cleansing. The challenge to the incumbent elements within the interim government under such circumstances is two-pronged: first, how can the old state institutions be reformed within a democratic framework so that a sufficient level of popular legitimacy can be secured? Second, when reform rather than elimination of the distrusted institutions becomes untenable in the public's view, how can the old institutions be modified without provoking a backlash from the army, the police, or the secret services, all of which have vested interests in the old order and are fearful of retribution? The latter question becomes further complicated when one tries to discern the strength of the links between incumbent leaders and discredited repressive institutions.

In East Germany, the Communists, despite their organizational advantages, were crippled by the forced pace of political change that culminated in the fall of the Berlin Wall on November 9, 1989. Egon Krenz, a party apparatchik who broke with Erich Honecker in October, 1989, and offered limited reform in an attempt to forestall revolutionary chaos, failed to respond to the demand for political participation. On November 7-8, under immense popular pressure, the GDR Communists yielded their monopoly to reformer Hans Modrow, who took it upon himself to prepare the country for free elections in May 1990. Yet, because the caretaker administration was led by a totally disgraced political party, Modrow's government could hardly rule. Its immobility was further accentuated by two major events. First, on November 28, Chancellor Kohl of

West Germany called for reunification of the two Germanies, a subject which then dominated East German politics to the almost total exclusion of the issue of democratic transition. Second, there was the revelation, in early December 1989, of widespread corruption on the part of the Communist Party leaders and public realization that the State Security Service (*Stasi*) remained untouched. The two events rendered East Germany ungovernable and left the Communists "*at the mercy of the revolution.*"⁵⁹

Czechoslovakia's collapsed transition followed in the footsteps of East Germany's. The abrupt disintegration of Czechoslovakia's Communist government forced its leaders to yield their monopoly on power and accept, on December 10, 1989, a minority role in the Government of National Understanding. The goal of the temporary government, under Marian Calfa, was to set a date for free elections and maintain law and order until that time. In late December, Vaclav Havel was elected Interim President by the outgoing Parliament and the first elections took place in June, 1990.⁶⁰

In both the GDR and Czechoslovakia, incumbent elements sought to transform the secret police, the *Stasi* and *StB*, respectively, in minute to midnight efforts to make them part of the new state system. When the attempts failed because the secret police was so reviled, the caretaker administrations were left without effective means of enforcing order. In the GDR, beginning in January, 1990, leading opposition groups, backed by thousands of demonstrators, were so enraged by Modrow's proposals to reform the security services that they forced an early adjournment of the weekly Round-Table talks. Modrow's interim government, they charged, was using every available tool to strengthen its power in the transition; they demanded that the government abandon its plan to preserve and rename the security force. In response, Modrow created a power-sharing "*government of national responsibility,*" jettisoned his plan to reform the security police, and agreed with the opposition to move the elections up to March 18.⁶¹

As the reform process began in Czechoslovakia, newspaper articles reported that security agents and collaborators were burning thousands of secret police files in the forests and were, moreover, preparing for a violent coup d'état.⁶² Despite the insistence of security police officials that they were complying with the governmental reforms, it was clear that police agents considered such reforms antithetical to their interests. Hence, it is no surprise that the masses felt that the *StB* had no role in the future democratic society.

These clamant popular demands placed the heirs of the incumbents in a difficult position. To continue the transition, they were dependent upon as broad a political consensus as possible. The ex-Communist East Germans could not endure a political exodus from the coalition government, just as the former Communist Czechs could not chance disrupted Round-Table negotiations. In both cases, remaining in power meant bowing to the popular opposition's calls for the dismantling of the secret police. At the same time, however, the outgoing Communists' ability to constrain the interim

governments had clearly diminished. In the two countries, the ties between the Communist parties and the secret police had been severed, as the police forces were subordinated to parliament. In addition, the collapse of the Communist regimes facilitated the interim governments' decision to yield to the popular opposition without exposing themselves to the risk of a Communist coup supported by the secret police, the Communist élite, or the army. Czech Interior Minister Scher announced in a speech to the Federal Assembly in late January, 1990, that "it is time to put the citizen's mind at peace and secure safety."⁶³ In late January, therefore, the Calfa government followed, within days, the example of the GDR and ordered the dismantling of the so-called Intelligence Services, as well as the remaining state security components. As in Berlin, security headquarters in Prague were emptied and secret police agents were told to stay home. Their weapons would be confiscated. No longer were the *Stasi* or the *StB* to be reorganized under a new democratic banner; they would, instead, at least officially, cease to exist as state institutions.⁶⁴

The abrupt collapse of the *Stasi* and the *StB*, and the early revelation of the contents of secret-police files, had a dramatic effect on the first democratic elections and far-reaching implications for the manner in which both Czechoslovakia and Germany have confronted their past. In Czechoslovakia, in particular, the security service's files were held hostage by politicians before the first free elections in June, 1990. Selective disclosures of alleged collaboration with the *StB* were used for political blackmail and may have had an impact on the results of the first elections.⁶⁵ Altogether, while in Germany the absorption of the east by the west deflected the institutional crisis resulting from the demise of the old bureaucracy, in Czechoslovakia, where state and society were entirely poisoned by Communist rule, the move to purify the polity had overwhelming institutional and political ramifications, far beyond Germany's personal and societal tragedies of the betrayal of friends by friends and relatives by relatives.⁶⁶ Nonetheless, even in reunited Germany, the early opening of the files has essentially discredited a generation of potential democratic leadership from the east.

The viability of the outgoing élite and its relative strength within a power-sharing coalition will determine its ability to use the interim period to introduce reforms that fall short of complete democratization; push the opposition to accept a formula designed to ensure the incumbent's dominant role in government and society; and retain its privileged position in a constitutional fashion. However, the fact that the incumbent feels it necessary to compromise its own legitimacy and approach the opposition indicates that its basis for preserving its own power is weak. Even so, the fact that opposition parties agree to share power, thereby partially legitimizing the incumbent, also demonstrates the opposition's relative weakness or its hesitation prematurely to assume power by itself. The unfolding of events in this manner may avert, delay or minimize the issue of evening the score. This is in contradistinction to the first model presented above, where the very fact of revolutionary severance

permits the provisional government to portray itself as untainted by the old regime — however inaccurate this perception may be — and move swiftly, often with vengeance, to purge its previous enemies.

Power-sharing becomes a remote option when the outgoing élite, even while still in control, is directly implicated in the violent suppression of dissent, the perpetration of human rights violations, the commission of economic crimes, and the flowering of corruption, all of which the opposition also may have engaged in. Indeed, when the democratic opposition believes itself to be, or likes to portray itself as undefiled by corrupt practices, it is more likely to prefer to shy away from a unity interim coalition, for fear of being infected by the incumbent's record. Yet, it may be argued that, by declining to share power, the democratic forces risk alienating a segment within the outgoing regime that may feel so threatened by the possibility of future reprisals, that it will contemplate the use of repressive force. Lech Walesa's drive to form the Mazowiecki power-sharing government in 1989, which succeeded despite the consensus position of the Solidarity Citizens' Caucus in the Polish Parliament that resisted any shared "*responsibility for solving the problems THEY created*,"⁶⁷ proved to be a critical move in averting a dangerous situation of ungovernability, and may have finessed the future treatment of past wrongs.

Moreover, a refusal to share power may also lead to the opposition's marginalization. By declining to share power, the democratic forces may miss an opportunity to discredit further the incumbent regime from within the government and fail to take advantage of the state apparatus to position themselves better for the first elections, or schedule elections according to their own convenience. Finally, by rejecting an interim coalition, the opposition may indirectly reinforce the legitimacy of a self-reformed incumbent and inadvertently assist in the incumbent's victory. In Bulgaria, the reformed Communists (renamed the Bulgarian Socialist Party), which ousted the 78-year-old dictator Todor Zhivkov in a November 1989 coup, won a parliamentary majority in June, 1990. Yet, despite their apparent conversion, the Bulgarian coalition of the democratic forces, known as the Union of Democratic Forces (UDF), rejected in early 1990 a Communist Party offer to share power in the months leading to the elections, calling it "a ploy to get the opposition to share responsibility for four decades of mismanagement."⁶⁸ Instead, the UDF decided to negotiate only from without and was thus outmaneuvered by the Communists in the first elections. Allegations of irregularities, an opposition boycott of parliament and a general strike that forced the Bulgarian Socialist government's resignation in November, 1990, led to the delayed formation of a power-sharing administration.⁶⁹

Power-sharing, therefore, involves opportunities and risks for incumbents and opposition élites alike. Timing, that is the question of how long the power-sharing administration is in control before democratic legitimation is conferred, is of critical importance. Any delay in the transition to fully democratic institutions may also retard the government's ability to move

toward daring policies on the domestic and international fronts, or enable the old guard to manipulate the situation and win undeserved privileges. In rapid transitions, by contrast, when a target date for elections has been set for the not-too-distant future, incumbent élites may not have time to “recover” from the authoritarian stigma, hence giving their opponents an advantage. Thus, one can observe the phenomenon of “*power-sharing from without*,” in which opposition élites use their influence to limit the incumbent regime’s freedom of action, without joining in the government. This was the case in Hungary, where the self-nullification of the Communist Party resulted in the formation of an incumbent caretaker administration that was entirely dominated by the agenda of the democratic forums.

Yet, even in such dramatic instances of national reconciliation as the Hungarian National Round Table, the incumbent did not waver in its attempt to retain positions of power by manipulation. On November 26, 1989, the Communists marginally lost a referendum in their bid to call a “snap” presidential election before parliamentary balloting, an election which would have been likely to catch the opposition unprepared and would probably have ensured the ascendance of a Communist head of state. The defeat in the referendum, followed by a historic compromise on Hungarian electoral law, rendered the caretaker government of Nemeth purely ceremonial.

Although the Hungarian interim administration was “*suspended without either coercive power or democratic legitimacy*,”⁷⁰ the sense of early and genuine Communist repentance, as manifested in the reburial of former Prime Minister Imre Nagy in June 1989, as well as a “*gentlemen’s agreement*” during the Round-Table negotiations between the political opposition and the reformed Communists to lay the past to rest, reinforced the spirit of reconciliation and diminished popular pursuit of retribution. Even though the calls for retribution were weaker in Hungary than in neighboring Czechoslovakia and economic recovery was given top priority, on November 4, 1991, the Hungarian Parliament adopted the Setenyi-Takacs law that removed the statute of limitations for crimes of murder and high treason that could not be prosecuted earlier. Hungarian President, Arpad Goncz, refused to sign the bill and sent it to Hungary’s Constitutional Court, which deemed the law unconstitutional.⁷¹

A reversed version of “*power-sharing from without*” may occur when the incumbent leaders realize that their dictatorship cannot survive a deep political crisis. In an attempt to forestall a total collapse, they may choose to transfer power to a broadly acceptable interim government, which they hope to dominate, even if from without. The timing of such a “*voluntary*” surrender of power is critical and the prospects of the incumbent’s achieving its goals decrease in direct proportion to the speed of internal disintegration.

Greece’s 1974 redemocratization affords the neatest example of incumbents failing to achieve power-sharing from without. In Greece, the junta chiefs rapidly lost control in the aftermath of their ill-fated intervention in Cyprus.

The mutiny in the Greek armed forces on July 22, 1974, forced General Ionnides to yield to his senior officers' demand that he surrender power to civilian rule. Although the military, acting as a state institution, initiated the dissolution of the dictatorship and the transfer of power to civilian leaders, it failed to salvage its eminent role in Greek politics.⁷² The officers who entrusted the premiership of the interim government to Constantin Karamanlis, the Conservative leader, hoped to secure for themselves key ministerial positions and a grant of immunity from prosecution for human rights violations. However, contrary to these expectations, Karamanlis capitalized on his victorious homecoming, after eleven years in self-imposed exile, and moved swiftly to strip the military of all positions of power. His harsh policies toward the junta resemble, in many respects, the unyielding posture of a provisional revolutionary government towards the *ancien regime*. The junta was labeled "*illegal*" and its top leaders "*criminal*."⁷³

Untarnished by the events that led to the downfall of the democratic system in April, 1967, and acceptable to a wide spectrum of Greek political groups, Karamanlis was in a unique position to assume the role of transition manager. He exploited the divisions among the military commanders and overwhelmed them with his determination to achieve full civilian control and return quickly to parliamentary rule. In his four months as interim premier, Karamanlis reached a ceasefire agreement with Turkey, released all political prisoners, granted amnesty for all political offenses except those committed by junta members, recognized all political parties including the Communists, dissolved the military police, dismissed junta appointed officials in the civil service, ended Greek participation in the military side of Nato, and maintained his resolve to hold parliamentary elections on November 17, 1974. Just a few weeks before the elections, Karamanlis arrested the leaders of the April 1967 coup, charged them with high treason, and initiated criminal proceedings against an additional twenty-nine army and police officers who were implicated in the killing of students during the uprising at Athens Polytechnic University in November, 1973.⁷⁴

Caretaker Governments: Perpetuating or Burying the Past?

The caretaker government formula involves situations in which the outgoing authoritarian regime, or perhaps a new élite within existing institutions, initiates a transition in the face of growing economic deterioration, severe discord within the ruling group, or the threat of serious opposition and even revolt. In some instances, the transitional regime wishes to defuse a potential crisis in good time; in others, the outgoing administration acts under immediate pressure. In all cases, the regime creates expectations which, if denied, can lead to the exacerbation of the very situation it wishes to avoid; thus, in some sense, regime-initiated transitions are less likely to deviate from

democratic outcomes than are provisional governments formed by the opposition or a power-sharing administration.

Transitions initiated by reformist incumbents, although advantageous in their potential for averting chaos in more or less ethnically homogeneous societies, nevertheless may be totally unacceptable in countries where historical cleavages of a national, ethnic, religious, or cultural character are so deep that the very idea of the incumbents leading the transition is repugnant to the opposition. In such countries, the initiation of a democratic transition by the incumbent, even if limited, may set in motion a sovereignty movement that could result in the disintegration of the state, as happened in the former Soviet Union and Yugoslavia.

In principle, it would seem that the opposition that has fought for the creation or the restoration of a democratic system would have a better claim than the incumbents, who have either opposed the democracy or belatedly come to accept play by democratic rules. However, if the incumbents make a commitment to democratic principles and, in good faith, are ready to abide by the electorate's decision to displace them from power, as long as there is no evidence that they intend to defy the will of the people, there is little reason to question the incumbents' right to act as a caretaker government. Their legal authority, although not legitimate from a democratic perspective, offers an advantage in that the organs of the state apparatus are accustomed to obeying them, while those organs would be more likely to question the authority of a provisional government headed by the opposition.⁷⁵ In Spain, as Paul Preston pointed out, "bringing the opposition to collaborate in a process of democratization within Francoist 'legality' was to be one of Suárez's greatest tasks and consequently greatest triumphs."⁷⁶

As caretakers, the incumbents or the heirs of the authoritarian regime lack democratic legitimacy but, although they are weak, they still control the state apparatus, allowing them to maintain public order. Their position is also enhanced because the opposition fears that a challenge might endanger the transition by mobilizing hardliners resistant to change or alienating the army. The goals of such a caretaker government include the successful transfer of power to those elected by the people (hopefully its own members), the maintenance of order in the meantime, the guarantee of the completion of electoral process, and the accommodation of the demands of the opposition while retaining power. For the incumbents to achieve some of these goals, a tacit understanding or agreement develops with the opposition. That the incumbent remains in power as a caretaker government gives those still reluctant to accept a regime change a certain sense of security; at the same time, those unopposed to transformation feel that they will not be totally excluded from political life. In short, everyone is given time to adjust to the many changes with minimum shock. In addition, the opposition has time to start organizing for the elections instead of concentrating on mass mobilizations and protest actions, or begin facing the difficult task of sharing power in

government. In South Korea, for example, after Chun Doo Hwan was forced by his party to resign the presidency of the ruling Democratic Justice Party (DJP) in June, 1987, opposition leaders first wanted to have their own members as ministers in an interim government that would take charge in the period before the presidential elections. However, they refrained from insisting upon a power-sharing arrangement, fearing that this would provoke the hardliners in the DJP and the military, and reverse in DJP Presidential candidate Roh Tae Woo.⁷⁷

Caretaker administrations may enjoy some leeway over the opposition in the race for electoral approval, especially if they are headed by incumbent heirs to the authoritarian regime who have skilfully managed to dissociate themselves from the brutality of the old and discredited leadership. This occurred in South Korea, where, in mid-1987, Roh Tae Woo of the DJP distanced himself from both the uncompromising policies of Chun Doo Hwan (who initially designated Roh as his successor) and, more critically, from direct association with the Kwangju massacre, in which at least 200 student demonstrators were killed by soldiers loyal to Chun. Roh's interim administration acknowledged past abuses, exonerated its victims, and accepted "*the spirit of democracy*" in which the opposition had acted. Significantly, Roh did not grant Chun and the military immunity from future prosecution. After he was elected president on December 16, 1987, benefitting from the split between the two major opposition contenders, Kim Young Sam and Kim Dae Jung, Roh swiftly initiated an inquiry of the Kwangju affair. In his inaugural speech on February 25, 1988, he declared: "The days when repressive force and torture in secret chambers were tolerated are over."⁷⁸

The likely success of incumbents as caretakers is greatly enhanced in the absence of a rapid loss of strength and subsequent power vacuum. This was the pattern in Spain, Brazil, Chile, Uruguay, and South Korea, as well as in Ortega's Nicaragua prior to the February 1990 elections. A critical factor in such situations is the belief of the opposition and the public at large in the incumbents' sincerity; a view shaped greatly by the incumbent elite's liberalization policies — the lifting of martial law, affording freedom to the press and the organization of parties, granting amnesty to political prisoners, and permitting the return of exiles — as well as the personal record of incumbent leaders on human rights. Certainly the reformers of a regime who were not guilty of massive human rights violations in the years before the transition are more likely to succeed in their role as a caretaker administration. Brazil's protracted transition is an unusual case, where the incumbent initiated and carried out an investigation into its own crimes as part of a gradual and controlled plan to withdraw from power peacefully and on its own terms.⁷⁹

Even though, in some instances, incumbent reformers do not have a pristine record on human rights, their infamy may be mitigated in situations where elements of the opposition itself have acquired a notorious reputation regarding human rights violations. In the case of Nicaragua, the Sandinistas'

incriminating record was often superseded by the abuses of their opponents, the Contras. Americas Watch reports indicate that in the mid-1980s Sandinista security forces committed many human rights abuses, but their behavior was considerably less brutal than that of their adversaries.⁸⁰

The Spanish situation represents a case in which the incumbent heirs of the authoritarian regime led by Prime Minister Adolfo Suárez, in their capacity as caretaker government, enjoyed a substantial degree of support from the public and the majority of the opposition, who trusted their democratic commitment. Most important was the fact that Suárez and his ministers had no incriminating record of human rights violations and no association with the horrors committed decades earlier. The brutalities of the Civil War and its aftermath could have been attributed to members of both sides, a notion of shared guilt, societal exhaustion, the subsiding of atrocities under Franco from the 1940s onward, a forward-looking mentality, and a willingness to forgive, all made possible a consensus on the renunciation of revenge. In July, 1976, shortly after the inauguration of his interim administration, Suárez declared a universal amnesty that launched the transition. In October, 1977, the majority members of the first democratically elected parliament approved an amnesty law, thereby signalling that the legitimate representatives of the people had finally settled the past.⁸¹

Transitions led by incumbents as caretaker become a remote option when the previous regime has disintegrated, when the incumbents cannot count on the loyalty of the armed forces, and mass mobilization or the guerrilla activity against the regime has undermined its authority in large parts of the country. The implication of the incumbent élite in massive criminal human rights violations or large scale corruption further erodes its chances of successfully constituting a viable caretaker government, and its attempt to lead a democratic transition is more likely to be viewed as a sham. In Argentina, for example, the junta that assumed a caretaker position in the aftermath of the Galtieri government's humiliating defeat in the Falklands/Malvinas conflict (April-June 1982) — a war which was initiated to defuse the growing opposition to the regime by uniting Argentines in an outburst of nationalism — was overwhelmed by the popular outcry regarding the *desaparecidos* (the Disappeared), and was virtually left with no escape route.

Although the army had forced Galtieri's resignation, the military branches remained so divided that they could not agree on his successor, or a future course for the country. After the air force and the navy withdrew from the junta, the army established a military caretaker government, with retired general Reynaldo Bignone as president. Unable to unite the military behind him, Bignone was forced to remove the ban on political parties and called for elections before the end of 1983. Indeed, in July, 1982, the time was ripe for the opposition to move decisively and assume a role in the government. For tactical reasons, however, the leaders of the *multipartidaria* (multi-party) front shunned power. They chose to play it safe by allowing the military to exhaust

itself further as a political force, and use the time left before elections for reorganizing and campaigning. Bignone's caretaker government, however, was preoccupied with safeguarding the military's position in any future arrangement. It sought assurances on military supremacy in matters relating to external defense and internal security, and concentrated its efforts on securing amnesty from investigations into the junta's corruption, domestic terrorist policies, and its disastrous economic policies, as well as the army's defeat in the Malvinas.

Bignone's failure to entice the *multipartidaria* into accepting these conditions prompted his caretaker government, in July, 1983, to decree an amnesty for itself for human rights abuses. This act provoked a massive protest by human rights groups and a constitutional challenge by some parties. Even though Bignone reached an agreement with the Peronista party, the would-be victors in the free elections, that there would be no derogations,⁸² the victory of the Radical presidential candidate, Alfonsín, sealed the military's fate. In fact, the exposure of the secret agreement between the military and the Peronistas caused great damage to the latter. Alfonsín skilfully exploited the issue in his campaign to discredit Italo Luder, the Peronista candidate who was indirectly stained by the military atrocities.⁸³ When democracy finally returned to Argentina in October, 1983, the new civilian government conducted investigations and trials against the leaders and high officials of the military, some of whom were tried and convicted for involvement in the campaign to exterminate the Argentine left. Altogether, it is still debatable whether the trials in Argentina were the inevitable outcome of the military's loss of control over the transition or the result of the junta's miscalculation in betting on the Peronist candidate. Mark Osiel, a student of Argentine politics, has argued that "It would not be an exaggeration to say that if Alfonsín had not been elected President, there would almost certainly have been no trial."⁸⁴

Amnesty, characterized by a broad spectrum of political behavior, is a multi-faceted instrument. It may eradicate old legacies, create new ones, or do both at the same time, in varying degrees. There is, however, a distinction between the behavior of popularly-elected governments and that of interim administrations. With regard to caretaker interim governments of the incumbents, such behavior runs the gamut from the last-minute self-amnesty of an incumbent in disarray that is unlikely to survive the transition, as in Argentina, to moves to amnesty only opponents, in an effort to saddle them with all the blame, as the Sandinistas did in Nicaragua. Between these two extremes, there are often instances of mutual amnesty, as occurred in Brazil, Spain and — *de facto* — in Uruguay.⁸⁵

In the case of Nicaragua, the Arias Peace Plan armed the Sandinistas with the tool of amnesty, which they manipulated until their final exit from power. The Sandinistas used amnesty as a political device which they employed to ensure that outside assistance to the Contras ceased. When such assistance was believed to have resumed, they halted amnesty. Moreover, the Sandinistas

were certain that only the Contras were villainous and, therefore, took no steps to acknowledge the presence of abusive elements in their own midst. Their lack of repentance was manifested by their inability to imagine that the elections of 1990 would sweep them from power, and their insistence that the voting would merely confirm their revolutionary rectitude.⁸⁶

The case of Uruguay is particularly telling with regard to the subtleties of incumbent-initiated amnesties, either of self or others. The Club Naval talks during the interim period not only precluded — *de facto* and not *de jure* — the trying of the Army for abuses, but also attempted to prevent, as Lawrence Weschler has pointed out, a period of official “truth telling.”⁸⁷ Those talks, held in Montevideo in June-July, 1984, between the military junta headed by General Medina and the opposition, enabled Uruguay’s military to exit from power on its own terms and paved the way for the November 25 presidential elections. The talks, attended by the opposition Colorado Party and the left-wing Frente Amplio but boycotted by the Blancos, whose leader, Wilson Ferreira, was still in prison, were marked by the military’s promulgation of a series of institutional acts which sequentially eradicated much of the repressive apparatus it had established in previous institutional acts. On August 3, the talks concluded successfully, “though without any formal signed agreements. Whether or not there were any secret protocols was later to become a subject of intense controversy,”⁸⁸ especially with regard to the issue of amnesty for army officers associated with extreme brutality. Officially, no decisions were made on the subjects of immunity and amnesty, either for prisoners held by the outgoing regime or members of the dictatorship implicated in human rights violations.

The issues came to the fore only in early March, 1985, once Colorado leader Sanguinetti took office as President after winning 41% of the vote. He signed a bill that, in essence, granted amnesty to all remaining political prisoners, but excluded torturers and other military violators of human rights.⁸⁹ Though formally the army received immunity neither during the transition negotiations nor after the elected president assumed office, some have argued that the army, in fact, unofficially secured Sanguinetti’s guarantees that its rank and file would be exempt from prosecution. According to Manuel Flores Silva, a senator from the Colorado Party, although the Club Naval Pact “did not speak explicitly, or even implicitly, about what would happen with regard to the past, ...the military had a right to assume that a peaceful transition would entail a peaceful working out of the past.”⁹⁰ In fact, both the army and the ruling Colorado Party tacitly, if not specifically, agreed that the March 1985 presidential grant of amnesty to the imprisoned far-left Tupamaro guerrillas and other political prisoners, which did not address the issue of whether individual military officers would be charged and tried, would absolve the military as well; both sides apparently saw this as a means of establishing “*moral equivalency*,”⁹¹ even though most of the human rights abuses were perpetrated by the army against innocent civilians.⁹²

Finally, in countries where the outgoing authoritarian élite, now defining itself as a caretaker administration, remains strong, there is a greater likelihood that the incumbent will manage to extort concessions from the democratic opposition. Such blackmail, usually under the threat of political chaos and violence, or halting the transition altogether, licenses the retention by the incumbents of "*hostages*,"⁹³ — legal, military, or economic — and casts a shadow on the functioning of the new polity, commonly known as a "*tutelary democracy*."⁹⁴ When the incumbent manages to dictate constitutional norms that predetermine the nature of the political system, it may imperil democratic practices for many years.

Chile's transition to democracy in March, 1990, after 17 years of strong dictatorial rule, during which more than 2,000 Chileans were either killed or "*disappeared*," is a classic example of such constitutional extortion. General Augusto Pinochet Ugarte succeeded in manipulating the divided opposition into working within the 1980 constitutional framework, which upheld a long transition formula designed to guarantee his remaining in power. According to this design, a popular yes-no plebiscite scheduled for October, 1988, was to validate Pinochet's bid to remain President through 1997; in the unlikely event of his defeat, he would still secure the position of army commander for another decade.⁹⁵ After an unexpected rebuff in the referendum, Pinochet remained in power as caretaker president for an additional fourteen months. Eventually, his own presidential candidate, Hernán Buchi, the Finance Minister who had earned a reputation as the mastermind behind Chile's economic recovery, lost the December 1989 elections to Patricio Aylwin.

Even during this second interim period, Pinochet worked to predetermine the future by making key appointments that the elected government would be unable to change. Most critical for the issues of amnesty and evening the score was the fact that, in his last year in office, Pinochet packed the Supreme Court by appointing nine new justices to life terms, a move that virtually guaranteed that the court would resist judicial reforms and efforts to reopen human rights cases that had been amnestied by Pinochet in 1978. In August, 1990, the Supreme Court unanimously upheld a 1978 statute protecting members of the security forces from prosecution for abuses. It determined that, because the amnesty was granted prior to the enactment of the 1980 constitution, the court could not alter it.⁹⁶ In December, 1990, in response to incriminating revelations by Aylwin's Commission of Truth and Reconciliation, Pinochet put the army on alert, reminding the elected President of who was in charge.⁹⁷

Conclusion

The time between the end of the old order and the installation of a new democratically-elected government is characterized at all levels of politics and society by volatility and uncertainty, often with dramatic implications for the

nature of the nascent system and the way in which it deals with the past. The questions of who governs in the interim period and with what authority, and how they use their power, are, therefore, crucial to the outcome of the transition and the character of the emergent polity. This essay has demonstrated how various types of interim government may affect the treatment of past abuses. It has shown that the behavior and tendencies of interim governments have important ramifications for the timing, scope, and outcome of efforts to eradicate sordid legacies and, therefore, for the character and stability of new regimes. Certainly, democratic handling of past legacies is intimately related to the legacies of the interregnum.

Although interim governments seldom bring an end to debate or the procedures concerning the score, their actions or immobility may perpetuate or even aggravate past abuses. Their immense importance notwithstanding, it is not always clear what type of interim government or which tactics are more conducive to achieving quality and for new regime. Obviously, from a democratic standpoint, only the evening of the score within the parameters of democratically-enacted law may be considered legitimate. This is why summary justice by provisional revolutionary governments has the propensity to delay or destroy the future implementation of democratic procedures. Yet, in some instances, when moderate leaders of provisional governments are faced with more extreme opponents, their best hope is to take drastic actions — emergency or even extralegal measures — to block the ascendance of extremists, lest such forces overwhelm them. Kerensky's demise was largely due to the fact that "he made too timid use of the new form of power that he had created."⁹⁸ In many instances of violent revolution, provisional governments may be required to yield somewhat to popular desires for revenge, but the task of those who are truly committed to democracy is to replace summary justice with real justice.

When democracies do unfold, it is not always clear whether fledgling institutions in themselves are equal to the daunting task of evening the score. Thus, for example, it is yet to be seen whether the "collapsed transition" in Czechoslovakia, that ignited an early and wide-ranging drive for retribution via the Lustration Law, will benefit or thwart the functioning of the new democracy, or precipitate the breakdown of the state. Likewise, it is debatable whether the early spirit of clemency in Poland that helped secure the destruction of Communist rule will, by leaving an aura of impropriety and corruption surrounding "*nomenklatura* firms" and the state banking system, in the long run, impair the rebuilding of credible institutions and undermine Poland's experiment in democracy.⁹⁹ Moreover, the fact that Hungary adopted a law that suspended the statute of limitation "for all crimes of murder treason, and aggravated assault leading to the victim's death committed during [Communist rule]"¹⁰⁰ may have created the impression in some quarters that the cry for justice there was as deeply-felt as it was in Czechoslovakia, even though the transitional situations and the interim governments in the two

countries differed profoundly. This impression is misguided, however, if one recognizes that the Hungarian constitutional court's decisions to strike laws providing for the evening of the score were not challenged by any responsible political force.¹⁰¹

The impact of interim administrations on evening the score may only be able to be assessed long after democratic transitions have occurred. In the Spanish case, time was on the side of reconciliation. Yet, when military incumbents retain some tutelage, it is not always immediately clear what type of treatment — harsh or lenient, by democratic choice or in response to the remnants of authoritarian compulsion — will benefit the fledgling democracy. For example, strong military incumbents that retain their tutelage and inhibit trials through self-amnesty may seem, at first glance, to hinder the moral refurbishing of society. In the long run, their attempt to hide the truth behind a veil of self-amnesty may perpetuate popular suspicion and distrust, undermine their claim to be “the nation’s *moral reserve*,” and encourage unity among the democratic forces. Conversely, when dictatorial or military regimes collapse and the investigations and trials conducted by new democratic governments fail to meet popular expectations of justice as a result of governmental bowing to political expediency, nascent systems may lose both the public’s initial enthusiasm for them and stable, working relations with the military. In the Philippines, in the face of threatened coups, President Aquino retreated from her pledge to prosecute the abuses committed by the military during the Marcos era. Her volte-face reinforced the non-democratic habits of society “in which men of status and influence are almost never held to account for their offenses against lesser persons or against the state but claim the right to share their own immunity with their dependents.”¹⁰² In her analysis of the responses of new democracies to human rights violations in Latin America, Alexandra de Brito has observed that in Chile, where the people and the democratic parties were aware that the report produced by President Aylwin’s investigatory committee could not lead to government-sponsored prosecution, their expectations were lower than those in Argentina. In reality, the reports became “the focus of political activity on the issue of human rights, [and contributed] to the healing process of the transition.”¹⁰³ In Argentina, however, the fact that the crimes chronicled in the *Nunca Más* report were not adequately reflected in the trials sponsored by the government shattered the expectation of “*total justice*,” made the victims of repression feel betrayed, and aggravated political polarization, which, in turn, reinvigorated the undemocratic voices within the army.¹⁰⁴

NOTES

1. This analysis draws on earlier works on the role of interim governments in democratic transitions, including Juan J. Linz, “Il fattore tempo nei muntamenti di regime,” *Theoria Politica* 2 (1986): pp. 3-47; Yossi Shain and Juan Linz, “The Role of Interim Governments,”

- Journal of Democracy* 3 (January 1992): pp. 73-89. The latter essay is drawn from a much longer and more amply documented paper presented by Shain and Linz at the 1991 convention of the American Political Science Association. Shain and Linz are now collaborating in the writing of a book on interim governments in transitions (Cambridge University Press, forthcoming).
2. For recent and more theoretical efforts, see John H. Herz, ed., *From Dictatorship to Democracy: Coping with the Legacies of Authoritarianism and Totalitarianism* (Westport, Conn.: Greenwood Press, 1982); *State Crimes: Punishment or Pardon*, Papers and Reports presented at The Aspen Institute, Wye Center, Maryland, November 4-6, 1988; Aryeh Neier, "What Should Be Done about the Guilty?," *The New York Review of Books*, February 1, 1990; Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, Ok.: University of Oklahoma Press, 1991), pp. 211-231; Guillermo O'Donnell and Philippe C. Schmitter, *Transition from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986), pp. 28-31; Alfred Stepan, *Rethinking Military Politics: Brazil and the Southern Cone* (Princeton: Princeton University Press, 1988), pp. 68-72.
 3. Alice H. Henkin, in *State Crimes*, p. 2.
 4. Huntington, *The Third Wave*, p. 215.
 5. O'Donnell and Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions*, p. 6.
 6. Competitiveness and fairness are difficult to define. Ergun Ozbudon proposes three tests for the competitiveness of elections: "universal adult suffrage; fairness of voting as guaranteed by such procedures as the secret ballot and open counting, as well as by the absence of significant degree of electoral fraud, violence, or intimidation; and the right to organize political parties..." See Ergun Ozbudon, "Review Article: Studies on Competitive Elections," *Comparative Politics* 21 (January 1989): pp. 237-238.
 7. Even in societies where other sources of legitimacy such as religious sanction or the socioeconomic nature of the regime are acknowledged, appeal to the people in some form is rarely absent.
 8. Robert Dahl, "Governments and Political Oppositions," in Fred I. Greenstein and Nelson W. Polsby, eds., *HandBook of Political Science, Vol. 3* (Reading, Mass.: Addison-Wesley, 1975), p. 120.
 9. Myres McDougal and W. Michael Reisman, *International Law Essays: Supplement to International Law in Contemporary Perspective* (Mineola, N.Y.: Foundation Press, 1981), pp. 526-527.
 10. See *The New York Times*, November 29, 1991, p. 14.
 11. See Youssef Ibrahim, "Interim Leaders in Algeria Stop Elections for Seats in Parliament," *The New York Times*, January 13, 1992, p. 1.
 12. See Claude Klein, "The Powers of the Caretaker Government: Are They Really Unlimited?," *Israel Law Review* 12 (July 1977): p. 276.
 13. An intermediate scenario of a temporary government enjoying partial, though highly questionable, democratic legitimacy is exemplified by the case of the interim government of Pakistan that took office following the dismissal of Prime Minister Benazir Bhutto in August, 1990. Bhutto's rival, Ghulam Mustafa Jatoi, was appointed as interim Prime Minister by the Pakistani President, Ghulam Ishaq Khan, who had used a constitution written during the dictatorship of the late President Zia ul Haq to launch a "constitutional coup." With no parliamentary motion to support him, Khan declared Bhutto's ouster on national television. He charged her with "corruption and nepotism," appointed an interim government, and promised elections on October 24, 1990. Regardless of Bhutto's alleged criminal record, the fact that the military was implicated in Khan's act and stood behind his choice for an interim prime minister cast a shadow on Khan's democratic intent and undermined the legitimacy of Pakistan's democracy. In the October elections, Bhutto suffered a stunning defeat but refused to concede. See *The Economist*, August 11 1990, p. 35; *Newsweek*, August 20, 1990, p. 47; *The New York Times*, August 15, 1990; *The Jerusalem Post*, October 26, 1990.
 14. A fourth model was identified by the authors as the "International Interim Government" formula, in which executive power is exercised by the world community through the agency

- of international institutions until an indigenous democratically-elected government can assume power. Based on the recent democratization of Namibia, we have argued that the international interim government is the best technique for overcoming seemingly irresolvable conflicts where the prospects for a power-sharing interim government are minimal because of historic and brutal rivalries and total mistrust among the indigenous contestants for power, and where complete victory by the opposition or total defeat by the present regime is neither likely nor conducive to democratic transition. Such conflicts are also marked by the deep involvement of foreign states in the struggle for power. See Lynn Berat and Yossi Shain, "Provisional Governments in Democratization: The 'International Interim Government' Model and the Case of Namibia," *Coexistence* 29 (March 1992): pp. 19-40; and Berat and Shain, "Interim Government in Democratic Transition: Lessons from Namibia, Hopes for South Africa?," *Conflict* 11 (January-March 1991): pp. 17-40.
15. These models do not take into account the interim governments of break-away republics of disintegrated states like Yugoslavia and the former Soviet Union.
 16. The successful holding of free elections, followed by the convening of a new parliament in which the government places its faith, and/or the inauguration of a new president in office may be considered the government's exit from provisionality. Thereafter, the struggle for power is conducted within generally-accepted democratic parameters and the issue of institutional legitimacy is, at least in principle, sealed. Hence, even if future constitutional changes are contemplated, they will take place within the existing institutional framework and the masses will not perceive them as severing normal democratic legitimacy.
 17. See Vladimir Tismaneanu, "Homage to Golan," *The New Republic*, July 30 & August 6, p. 16.
 18. Linz further maintains that sultanistic "overthrow is more likely to lead to another nondemocratic regime, sometimes with characteristics similar to the one overthrown, or to a revolutionary regime that attempts to create *ex novo* organized social forces, assuming power without allowing the development of competitive social and political forces and the relatively free competition of democratic rule." See Juan Linz, "Transitions to Democracy," *The Washington Quarterly* (Summer 1990): p. 147.
 19. See Mark Almond, "Romania Since the Revolution," *Government and Opposition* 25 (Autumn 1990): pp. 484-496; Daniel Nelson, "Romania," *Electoral Studies* 9 (December 1990): pp. 355-366.
 20. See *Keesing's Record of World Events*, September 1990, pp. 37741-42. In January, 1992, the Romanian Senate appointed a commission to investigate "possible infringements of the law supposed to have been committed during the governance of the cabinet headed by Peter Roman." The reason for establishing the commission was friction within the NSF elite between the camps of former Prime Minister Roman and President Iliescu. The rivalry between the two groups threatened to open a Pandora's box that might eventually contaminate the entire ruling elite. See Michael Shafir, "Romania: Investigation into Government Corruption," in *RFE/RL Research Report* 1:8, February 21, 1992, pp. 31-36.
 21. See Lucian Mihai, "On the 'Trial of Communism' in Romania," paper presented at the conference on Justice in Times of Transitions, Schloss Leopoldskron, Salzburg, Austria, March 7-10, 1992. In 1991, Helsinki Watch reported that "[r]epression in Romania was so severe under Ceausescu that a civil society had no opportunity to develop. There was no human rights movement, no samizdat press. No groundwork had been laid for the development of democratic institutions. Thus despite some progress, Romania is still experiencing significant human rights abuses." Cited in Istvan Deak, "Survivors," *The New York Review of Books*, March 5, 1992, p. 51.
 22. See Richard Falk, *Human Rights and State Sovereignty* (New York: Holmes and Meier, 1981), p. 206.
 23. "Fascism" usually implied right-wing personal dictatorships targeted by the "revolutionaries" as outgrowths or proxies of imperialist powers, primarily the U.S.
 24. See Linz, "Il fattore tempo nei mutamenti de regime."
 25. Cited in Dennis Gilbert, *Sandinistas: The Party and the Revolution* (Oxford: Basil Blackwell, 1990), p. 35 (emphasis in the original).

26. See John J. Moore, Jr., "Problems with Forgiveness: Granting Amnesty under the Arias Plan in Nicaragua and El Salvador," *Stanford Law Review* 43 (February 1991): pp. 746-751.
27. Thomas Bruneau, "Transitions from Authoritarian Regimes: The Contrasting Cases of Brazil and Portugal," in Fred Eidlin (ed.), *Constitutional Democracy* (Boulder, Co.: Westview Press, 1983), p. 470.
28. See Nancy G. Bermeo, *The Revolution Within the Revolution: Workers' Control in Rural Portugal* (Princeton: Princeton University Press, 1986).
29. In his resignation speech, General Spínola attacked the left for trying to create "a new kind of slavery" in the name of a "false democracy." See *The Economist*, October 5, 1974, p. 16.
30. Remarkably, only a small number of people were killed or injured. See Ben Pimlott, "Socialism in Portugal: Was it a Revolution?," *Government and Opposition* 12:3 (Summer 1977): p. 344.
31. On the democratic transition in Portugal, see Kenneth Maxwell, ed., "Portugal Ten Years After the Revolution," Research Institute on International Change, School of International and Public Affairs, Columbia University, New York, 1984.
32. See Nelson, "Romania," pp. 355-366. Of the 253 seats in the interim assembly, half were allocated to the FSN and the rest to the thirty-seven other parties. Although this disproportionate division antagonized the opposition, the fact that the opposition was represented in the interim legislature helped in "diluting any tendency towards a reassertion of one-party rule." *Ibid.*, p. 360.
33. Crane Brinton, *The Anatomy of Revolution* (New York: Vintage Books, 1965), pp. 137-138.
34. See *Ibid.*, pp. 132-137. Also see Lionel Kochan, *Russia in Revolution 1890-1918* (London: Weidenfeld and Nicolson, 1966), pp. 169-192.
35. Cited in H.E. Chehabi, *Iranian Politics and Religious Modernism: The Liberation Movement of Iran under the Shah and Khomeini* (Ithaca, N.Y.: Cornell University Press, 1990), p. 254.
36. See Chehabi, *Ibid.*, pp. 253-257; Said Amir Arjomand, *The Turban for the Crown: The Islamic Revolution in Iran* (New York: Oxford University Press, 1988), pp. 134-141. In a widely publicized interview with Oriana Fallaci, Bazargan reflected on his failure as the head of the provisional government, referring to himself as "a knife without a blade." See Oriana Fallaci, "Everybody Wants to be the Boss," *The New York Times Magazine*, October 28, 1979.
37. Chehabi, *Ibid.*, pp. 257-258.
38. Jerry F. Hough and Merle Fainsod, *How the Soviet Union is Governed* (Cambridge, Mass.: Harvard University Press, 1979), p. 42.
39. These scenarios are most likely to occur when neither an incumbent collaborationist regime's remaining in power nor a deposed government-in-exile's restoration is acceptable or possible.
40. See Lamberto Mercuri, "Defascistization in Italy," paper presented at the conference on Transitions From Fascism to Democracy: Europe After World War II, University of Bergen, Chr. Michelsen Institute, Bergen, Norway, June 27-29, 1985, p. 2.
41. Michele Cointet-Labrousse, "Between Summary Justice and the Reconstruction of Legality By Decree: The Theory and Practice of French Purge Policy 1943-53," paper presented at the conference on Transitions From Fascism to Democracy: Europe After World War II, University of Bergen, Chr. Michelse Institute, Bergen, Norway, June 27-29, 1985, p. 2.
42. *Ibid.*, p. 10.
43. *Ibid.*; see also Brian Crozier, *De Gaulle* (New York: Charles Scribner's Sons, 1973), pp. 368-369.
44. See Bernard Ledwidge, *De Gaulle* (London: Weidenfeld & Nicolson, 1982), p. 204.
45. See Alexander Werth, *De Gaulle* (London: Penguin Books, 1969), p. 190.
46. See *The New York Times*, April 21, 1992, p. 6.
47. On the character of pacts, see O'Donnell and Schmitter, *Tentative Conclusions*, pp. 37-47; and Giuseppe Di Palma, *To Craft Democracies: An Essay on Democratic Transitions* (Berkeley: University of California Press, 1990), pp. 86-90.
48. The concepts "them and "us" were used by Oleg G. Rumiantsev, "From Confrontation to Social Contract," *East European Politics and Societies* 5:1 (Winter 1991): pp. 113-126.
49. Stephen Sestanovich, "The Hour of the Demagogue," *The National Interest*, Fall 1991, p. 7.

50. See Paul Lewis, "Non-Competitive Elections and Regime Change: Poland 1989," *Parliamentary Affairs* (January 1990): pp. 90-107; and Antoni Z. Kaminski and Joanna Kurczewska, "Letter From Poland," *Government and Opposition* 26 (Spring 1991): pp. 215-228.
51. Anna Sabbat-Swidlick, "Problems of Poland's State Security Office," *RFE/RL Research Report*, February 28, 1992, p. 15.
52. *Ibid.*
53. *Ibid.*, p. 20.
54. David Stark and Laszlo Bruszt, "Negotiating the Institution of Democracy: Contingent Choices and Strategic Interactions in the Hungarian and Polish Transitions," Working Paper on Transitions from State Socialism, Cornell Project on Institutional Analysis, Center for International Studies, Cornell University, September 1990, 20.
55. See Judy Batt, *East Central Europe From Reform to Transformation* (New York: Council on Foreign Relations Press, 1991), p.40. A shorter version of this essay appeared in "The End of Communist Rule in East-Central Europe: A Four-Country Comparison," *Government and Opposition* 26:3 (Summer 1991).
56. See Vaclav Havel *et al.*, *The Power of the Powerless: Citizens against the State in Central-Eastern Europe* (Armonk, N.Y.: M.E. Sharpe, Inc., 1990), p. 71.
57. Nicolai Hansteen, "Challenging the Legacy of the Secret Police: The Case of Czechoslovakia and East Germany," unpublished paper, Middlebury College, December 11, 1991. Our analysis of the two cases follows Hansteen's.
58. Di Palma, *To Craft Democracies*, p. 95.
59. See Sigrid Meuschel "The End of 'East German Socialism'," *Telos* 82 (Winter 1989/90): pp. 17-24.
60. See Gordon Wightman, "Czechoslovakia," *Electoral Studies* 9 (December 1990): pp. 319-326.
61. Already, on December 4, 1989, when rumors circulated that secret police files had been burned, demonstrators stormed the *Stasi* building in Leipzig. In mid-January, with the impasse in the Round-Table, the crowd took over the *Stasi* headquarters in Berlin and seized the files. See Daniel Friedheim, "Regime Collapse in Democratic Transition: The East German Revolution of 1989," paper delivered at the Eight International Conference of Europeanists in Chicago, March 27-29, 1992. Friedheim provides an excellent analysis of the dynamics of collapsed transitions.
62. See *The Los Angeles Times*, February 3, p. 1.
63. See *FBIS-EEU*, January 30, 1990, p. 15, cited in Hansteen.
64. Hansteen, p. 8.
65. See Hansteen, *Ibid.*, and Jan Obrman, "The Parliament Approves Screening of Deputies," *Report on Eastern Europe*, January 31, 1991, p. 5.
66. See Stephen Kinzer, "East Germans Face Their Accusers," *The New York Times Magazine*, April 12, 1992; Vaclav Havel, "Paradise Lost," *The New York Review of Books*, April 9, 1992, pp. 6-8; Jeri Laber, "Witch Hunt in Prague," *The New York Review of Books*, April 23, 1992, pp. 5-8.
67. Cited in Andrzej W. Tymowski, "East European Social Movements in the Transition to Democracy: A Comparative Study of Poland, Czechoslovakia, and the GDR," paper prepared for delivery at the 1990 Annual Meeting of the American Political Science Association, San Francisco, Aug. 30-Sept. 2, 1990, p. 26 (emphasis in the original).
68. These negotiations resulted in an agreement on an election date (June 1990) much earlier than the opposition had wanted, a complex voting system, and the size and functions of the future Grand National Assembly. See "Bulgaria Opposition Rebuffs Communists on Sharing Power," *The New York Times*, February 1, 1990. Also see Stephen Ashley, "Bulgaria," *Electoral Studies* 9 (December 1990): pp. 312-318.
69. On December 20, 1990, the Bulgarian Grand National Assembly approved the formation of a power-sharing interim coalition, pending the holding of fresh elections in 1991. See *Keesing's Record of World Events*, November 1990, 37865, and December 1990, 37923.
70. At the same time, the opposition parties used the period before the March 1990 elections to focus their grievances "as much on each other as on the Communists." See Batt, "The End of

- Communist Rule in East-Central Europe," pp. 383-84; see also Laszlo Bruszt, "1989: The Negotiated Revolution in Hungary," *Social Research* 57 (Summer 1990): pp. 365-87.
71. See Judith Pataki, "Dealing with Hungarian Communist's Crimes," *RFE/RL Research Report*, 28 February 1992, pp. 21-24; Judith Ingram, "Coming Trials That May Try the Hungarian Soul," *The New York Times*, November 13, 1991, p. 4; *The New York Times*, December 26, 1991, p. 9; *Financial Times*, March 4, 1992, p. 1.
 72. For an excellent discussion on the differences between the military's acting as an institution of the state rather than of the regime, see Robert Fishman, "Southern Europe Transition to Democracy," *World Politics* 42:3 (April 1990): pp. 422-440.
 73. See Herz, in Herz ed., *From Dictatorship to Democracy*, p. 277.
 74. See Harry Psomiades, "Greece: From the Colonels' Rule to Democracy" in Herz, ed., *From Dictatorship to Democracy*, pp. 251-73; Christos Lyrantzis, "Political Parties in Post-Junta Greece: A Case of Bureaucratic Clientelism," in Geoffrey Pridham, ed., *The New Mediterranean Democracies: Regime Transition in Spain, Greece, and Portugal* (London: Frank Cass, 1984), pp. 9-117.
 75. Linz, "Il fattore tempo nei muntamenti di regime."
 76. Paul Preston, *The Triumph of Democracy in Spain* (London: Methuen, 1986), p. 94. The Spanish reformist Prime Minister Adolfo Suárez, in his address upon assuming the premiership in June 1976, clearly stated his position that, until the first elections, he intended to stay in power and guide the transition process from within the constitutional framework, rather than turn power over to the representatives of the large number of opposition groups, whatever their prestige, visibility, and potential backing. Indeed, Suárez conducted the transition with limited cooperation from, and virtually without the participation of the democratic opposition in his administration. Though he agreed to legalize the Communist Party, he rejected outright the plan of the opposition camp — Communists, Socialists, Basque Separatists, Catalan Nationalists, and a few Liberals and Christian Democrats — to install a provisional government divorced from the old regime, and objected to their idea of forming interim autonomous governments in Catalonia and the Basque Country. The June 1977 Spanish elections came to support, indirectly, Suárez's position, for he won a plurality that allowed him to form the first parliament-based democratic government, a position reconfirmed by the 1979 elections.
 77. See *The Economist*, July 18, 1987, p. 54.
 78. Cited in *The Economist*, February 27, 1988 p. 45.
 79. Alfred Stepan stresses the fact that the limited brutality in Brazil, where, unlike in Argentina, the army killings affected a tiny proportion of the population, was critical in ensuring the opposition's support of the 1979 "mutual amnesty." Stepan, *Rethinking Military Politics*, p. 64. The case of Brazil is theoretically difficult from the point of view of designating the interim period.
 80. See Gilbert, *Sandinistas*, p. 166.
 81. Suárez's amnesty, which polls indicated was supported by 67% of the population, excluded terrorists who caused physical injury to persons, but included conscientious objectors and military personnel who had been charged with sedition, although the latter were prevented from returning to the fold. The amnesty also reinstated university professors who had been opponents of the regime. The subsequent amnesty granted by Parliament was extended to those who had committed political violence; this had particularly significant implications for Basque terrorists. See Alfonso Osorio, *Trayectoria Política de un Ministro de la Corona* (Barcelona: Planeta, 1980), pp. 156-161; see also Samuel H. Barnes, "Democratization in Contemporary Europe: A Spanish Lesson," paper presented at the 1990 Annual Meeting of the American Political Science Association, San Francisco, August 30 through September, 1990, p. 5; Fernando Rodrigo, "The Politics of Reconciliation in Spain's Transition to Democracy," paper presented at a conference on Justice in Times of Transition, Schloss Leopoldskron, Salzburg, Austria, March 7-10, 1992.
 82. The agreement, known as "el pacto militar-sindical" promised the Peronista presidential candidate the support of the army in the elections in return for the immediate suspension of all investigations on the *desaparecidos*. See *Keesing's Record of World Events*, December

- 1983, 23555.
83. See David Rock, *Argentina 1516-1987: From Spanish Colonization to Alfonsín* (Berkeley: University of California Press, 1987), 383-89; Aldo C. Vacs, "Authoritarian Breakdown and Redemocratization in Argentina," in James M. Malloy and Mitchell A. Seligson, eds., *Authoritarians and Democrats: Regime Transition in Latin America*, (Pittsburgh, Pa.: University of Pittsburgh Press, 1987), 28-31; and Ronaldo Munck, *Latin America: The Transition to Democracy* (London: Zed, 1989), 103-105.
 84. See Mark Osiel "The Making of Human Rights Policy in Argentina: the Impact of Ideas and Interests on Legal Conflict," *Journal of Latin American Studies* 18, (1986): p. 143. In late December, 1990, despite the fierce protests of many Argentinians, the Peronista President, Carlos Saúl Menem, pardoned the military officers as part of his attempt to calm resentment within his armed forces. See "Argentine Frees Junta Strongmen," *International Herald Tribune*, December 31, 1990-January 1, 1991.
 85. On the exceptional case of Uruguay, see below.
 86. See Moore, "Problems with Forgiveness," pp. 733-777.
 87. See Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* (New York: Pantheon Books, 1990), p. 189.
 88. *Ibid.*, p. 158. See also, "Derechos Humanos: Seregni-Marchesano-Ferreira," *El Popular*, Montevideo, Dec. 5, 1986, pp. 1-8 (from debate on Club Naval and subsequent political developments leading to amnesty from television program "Prioridad" of Dec. 3, 1986).
 89. *Ibid.*, p. 259.
 90. Cited in *Ibid.*, p. 183.
 91. *Ibid.*, p. 188. A similar moral equivalency argument was made by Marcel Niedergang in "Sanguinetti: es normal haber amnistiado a los Militares," *Brecha*, Montevideo, Nov. 9, 1985, p. 32. On the pact of the Club Naval, see also "Ferreira: El Pacto de Impunidad existe desde el Club Naval," *El País*, Montevideo, Dec. 20, 1986; Stepan, *Rethinking Military Politics*, p. 69; Huntington, *The Third Wave*, p. 226.
 92. In 1986, when the Tupamaros and other victims of military repression began to bring charges against police and military officers for abuses committed during the dictatorship (1973-1985), the military grew intransigent and made it clear that officers would not answer court summonses. Then, the Colorados and a majority of the Blancos, the largest party in the legislature, passed an amnesty on December 22, 1986, just a day before the first of the military subpoenas was due. Their action prompted a successful opposition campaign to force a referendum on the amnesty. However, on April 16, 1989, with the threat of military unrest looming large, a majority of Uruguayans voted to reject the effort to overturn the amnesty. See *The New York Times*, April 17, 1989.
 93. On incumbents' attempts to extort sacrifices from the opposition, especially in the economic sphere, see Robert H. Bates, "The Economics of Transitions to Democracy," *PS* 24 (March 1991): pp. 24-27. The term "hostage" is borrowed from this analysis.
 94. Tutelary Democracy is defined by Adam Przeworski as "a regime which has competitive, formally democratic institutions, but in which the power apparatus, typically reduced by this time to the armed forces, retains the capacity to intervene to correct undesirable states of affairs." See Adam Przeworski, "Democracy as a Contingent Outcome of Conflicts," in Jon Elster and Rune Slagstad, eds., *Constitutionalism and Democracy* (New York: Cambridge University Press, 1988), p. 61.
 95. Indeed, the question of whether to take part in the plebiscite posed a serious dilemma for the Chilean opposition. Participation could have been interpreted as conferring legitimation to the authoritarian elections, or even the regime itself. See Jean Grugel, "Transitions From Authoritarian Rule: Lessons From Latin America," *Political Studies* 35 (1991): pp. 363-368.
 96. See Pamela Constable and Arturo Valenzuela, "Chile's Return to Democracy," *Foreign Affairs* (Winter 1989/90): pp. 169-86; and Valenzuela and Constable, *Current History* 90 (February 1991): pp. 54-56.
 97. See Nathaniel C. Nash, "Pinochet is 'My Franco,' Chile's Chief Says, Going His Own Way (Carefully)," *The New York Times*, April 30, 1992, p. 3.
 98. Sestanovich, "The Hour of the Demagogue," p. 4.

99. See Louisa Vinton, "Poland: The Anguish of Transition," *RFE/RL Research Report*, January 3, 1992, p. 95.
100. Pataki, "Dealing with Hungarian Communists' Crime," p. 21.
101. Alajos Dornback, "The Question of Crimes Committed Under the Previous Regime Not Previously Persecuted For Political Purposes in Hungary," paper presented at a conference on Justice in Times of Transition, Schloss Leopoldskron, Salzburg, Austria, March 7-9, 1992, p. 8.
102. Carl H. Lande, "Introduction: Respect and Prospect," in Carl H. Lande, ed., *Rebuilding a Nation: Philippine Challenges and American Policy* (Washington, D.C.: Washington Institute Press, 1987), p. 30.
103. See Alexandra de Brito, "A Comparative Study of Truth Telling in the Southern Cone: The Nunca Más Reports of Brazil, Argentina, and Uruguay, and the Informe Rettig of Chile in the Transition from Military Rule to Democratic Rule," unpublished manuscript, Yale University, January 1992, p. 49.
104. *Ibid.*, pp. 47-49.