Letting Sleeping Dogs Lie?

Chair of Vetting Commission: *Do you swear to faithfully serve the new Polish Republic?*
Franz Mauer: *I do, to the very end, be it mine or hers.* (Wladyslaw Pasikowski, *Psy* [*Dogs*])

After Generalissmo Francisco Franco died, the elites who succeeded him resolved on behalf of the Spanish people to let bygones be bygones. Formally, in 1977, they passed an Amnesty Law; informally, they agreed to a "Pact of Forgetting." The rationale offered for this deliberate decision was to chose democracy over justice. Although the Francoist regime had committed numerous atrocities during the civil war of 1936–1939 as well as after the Nationalists' victory, Spanish elites decided to "seal the archives" of the *Guardia Civil* and the *Policia Armada* (Franco's secret police)[1] and not attempt any reckoning with the past. Even private conversation concerning the civil war and the authoritarian regime that succeeded it was rendered taboo. This "Pact of Forgetting" was shared widely by all sides of the political spectrum, including the communists against whom Franco's Nationalists had fought in the civil war. For instance, Santiago Carillo (general secretary of the Spanish Communist Party at the time of transition) was quoted as saying: "In our country, there is but one way to reach democracy, which is to throw out anyone

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[1] Both were security agencies designed to preserve the power of the Spanish dictator. The Guardia Civil was mainly active in rural areas, whereas the Policia Armada patrolled cities and metropolitan areas.

who promotes the memory of the Civil War. We do not want any more wars, we have enough of them already."[2]

The informal pact became so entrenched that when, in 2007, a socialist government tried to revisit the past by proposing the mildest of transparency measures, victim rehabilitation, it was met with staunch criticism.[3] The Spanish example stood in contrast with its geographic and temporal neighbors, Greece and Portugal, both of which thoroughly purged their former authoritarian leadership and its agencies. To see this contrast, one need only to look at Figures 1.1 and 1.2. Both are based on data from the Global Transitional Justice Dataset.[4] Figure 1.1 shows the removal of leaders associated with the *ancien régime* in eighty-four countries that had such leadership purge events. Most notably, since zeroes have been omitted from these figures, Spain is not even listed among the countries that underwent such purges. Figure 1.2 shows thorough purge events, that is, instances of shuttering entire former authoritarian agencies. Spain had no such events either.

Incidentally, neither Greece nor Portugal fared as well recovering from their authoritarian pasts as Spain. By the early 1990s, Spain had risen to be come one of the leading nations in the European Community, with a GDP per capita of almost 68 percent of that of the United States in 1991 (based on purchasing power parity according to the International Monetary Fund, IMF)[5] and a Polity IV score of 10. Scholars of comparative democratization, a popular and growing field of political science in the twentieth century, overwhelmingly agreed that Spain consolidated because of letting bygones be bygones rather than despite it. Regardless of what kind of authoritarian or post-conflict legacy a country was recovering from, transitional justice (TJ) was believed to jeopardize, not facilitate democratization (Huntington 1991; Linz et al. 1978; O'donnell et al. 2013; Przeworski 1991).

It is then hardly surprising that when twenty years later, a wave of democratization spread across Eastern Europe, Spain's approach to reckoning with the authoritarian past was used as a model for (not) dealing with the legacies of communism. In Poland, this approach was

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[2] See *Europe: Painful memories; Spain's civil war* (2006).

[3] See *Europe: A Rude Awakening; Spain's Past* (2007).

[4] The details on how this dataset was prepared are explained later in this chapter as well as in Chapter 4.

[5] As a point of comparison, Portugal's GDP per capita relative to that of the United States for the same year was 56 percent, barely higher than the 52 percent recorded in 1982, and Greece's was 60 percent, down from 72 percent in 1980.
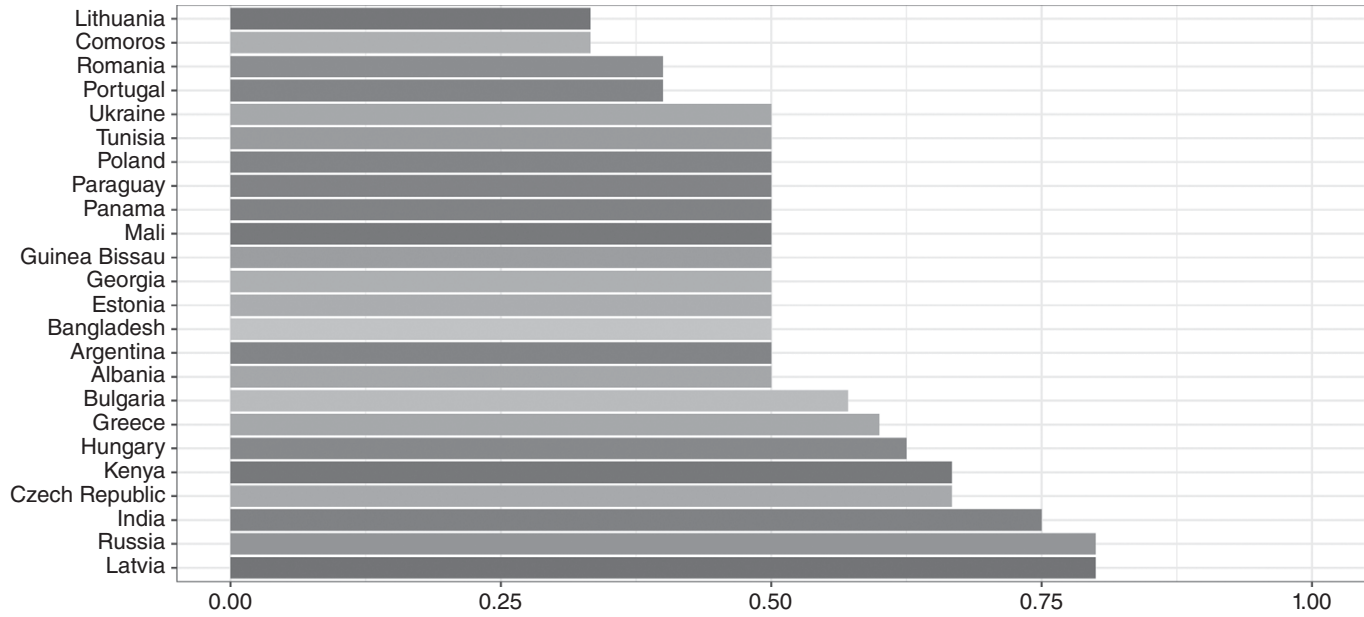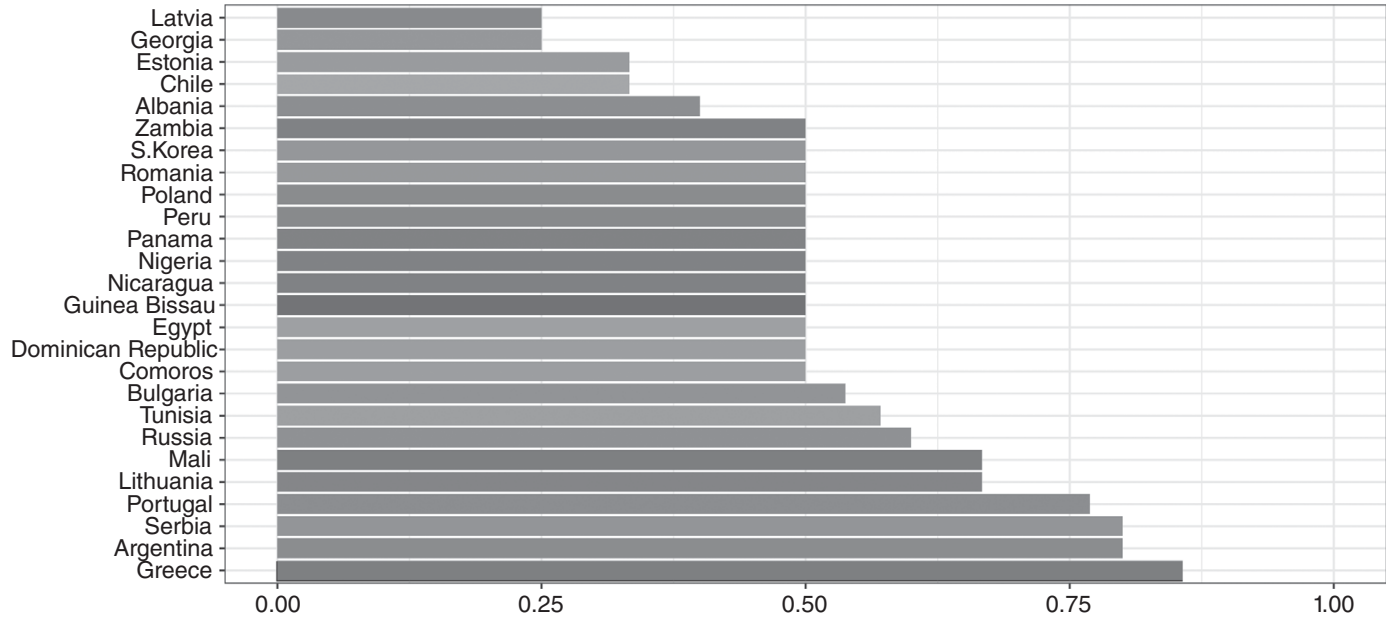
FIGURE I.I. Severity of thorough purges

FIGURE 1.2. Severity of leadership purges

summarized with the term *"gruba kreska"* ("thick line"). Although originally intended to represent the idea of a clean slate for the new noncommunist cabinet, which would only be held accountable for policies implemented after assuming office, it quickly came to represent the idea of forgiving the communists for all human rights violations committed during their 45-year-long tenure in Poland.[6]

In his 1989 inaugural speech to parliament as the first non-communist prime minister in 45 years, Tadeusz Mazowiecki announced *I present to you a cabinet that bears no responsibility for the mortgage it is inheriting today. Even though it affects the circumstances in which we must operate, we are separating ourselves from the past with **a thick line*** (Gostkiewicz 2013).

The international community of scholars largely applauded this decision. Jack Snyder argued that "the prosecution of perpetrators of atrocities according to universal standards risks causing more atrocities than it would prevent, because it pays insufficient attention to political realities" (Snyder & Vinjamuri 2004, p. 5). Samuel Huntington maintained that sometimes "amnesty…is necessary to establish a new democracy on a solid basis" (Huntington 1993, p. 214) and that "even if a moral and legal argument could be made for prosecution, this would fall before the normative imperative of creating a stable democracy."

This policy was also widely endorsed by a group of social scientists formed around the law journal *The East European Constitutional Review* published in the 1990s; first, at the University of Chicago and later at New York University. Jon Elster and Stephen Holmes spearheaded this movement and used Spain's most benign way of dealing with former authoritarian collaborators to build their case that "doing nothing" is the best approach for new democracies to deal with past authoritarian regimes (Elster 2004). "Gruba kreska" and the "Pact of Forgetting" in contrast to "witch hunts" and "ritual sacrifices," they argued, allow typical political cleavages of left and right to form without the development of a "regime divide" where opponents of the previous regime overlook their ideological differences and maintain a united front against successor autocrats, even when these members of the opposition actually share ideological identities with the successor autocrats.[7] Delayed democratic consolidation due to

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[6] These violations included torture, despite Poland signing the Geneva Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[7] In the context of post-communist Europe, for reasons explained later, "gruba kreska" failed and a regime divide did emerge (Grzymala-Busse 2001). Concretely, Grzymala-Busse defines the regime divide as the persisting conflict between the successors

a party system that fails to develop programmatically is but one of the possible costs of making TJ central to political debates.

Poland and Hungary, which transitioned in short succession, both refrained at least initially from harsh decommunization. In Poland, President Wałęsa and his supporters from the Citizens' Committee prevented any decommunization bills spontaneously passed on the legislative floor from being implemented.[8] Latter attempts were halted by the Constitutional Tribunal, a constitutional court established a few years before the transition. In Hungary, the Constitutional Court was also responsible for first halting and then significantly delaying attempts to deal with the past.

Borrowing the Spanish Model and applying it to countries with completely different authoritarian legacies seemed like a perfectly legitimate thing to do. Scholars had not yet started to appreciate that how dictatorship operated has critical implications for the types of TJ that can and should be used. This is one of the misconceptions I will address in this book.

The key difference between Eastern Europe on the one hand, and Spain on the other, is that propping up communist regimes for more than four decades required a skilled and powerful secret police apparatus that collaborated with tens of thousands of secret informers whose identity at the time of the transition to democracy was unknown.

Some of those offering support to the regime were open collaborators, such as communist party functionaries and top-echelon workers of the state. Even salaried cops of the secret police, to the extent that they did not hide their policing activity were open collaborators. Others such as the informers and agents recruited by the secret police conducted their activity in secret. Procedures dealing with open collaborators are not only descriptively but analytically different from those that deal with secret collaborators. The latter, as painful as this may be, ought to be exposed. Failing to do so risks damage to the fledgling democracy. The open collaborators, on the other hand, sometimes must be purged but sometimes should be kept on.

to the pre-1989 communist parties and the parties emerging from the communist era opposition. The deeper this divide, the lower the chances of coalition formation between the communist successors and their opposition counterparts based on shared policy goals.

[8] In a spectacular takedown of legislation, aiming to reveal the identities of secret police agents by the Polish Minister of Interior, Wałęsa and his allies brought down the entire cabinet and replaced it with one that vowed to stay clear of dealing with the past.

1.1 NEITHER RETRIBUTION, NOR RECONCILIATION

The opening quote to this book features a policeman of the secret enforcement apparatus, Franz Mauer, during such a moment of reckoning. He is being interviewed by a vetting commission set up to decide whom among the communist law enforcement the new democratic state should rehire. Franz Mauer's file contains more red flags than honors, so in the end, the commission's chair asks Mauer directly if he will "faithfully serve the new Polish Republic." Mauer's cynical reply indicating that he is committed to the mission until the end, be it his or hers, does not dissuade the chair from rehiring him. Hence, a former communist cop is left unscathed by the purge. In contrast, many informers recruited by the likes of Franz Mauer will be exposed and sometimes prevented from holding public office.

This book will show that paradoxically, it is more important to expose the nonprofessional agents and informers than to purge the state of open members and administrators of former dictatorships. Though purging the former authoritarian state depends on the specific traits of the authoritarian regime, exposing collaborators who supported the *ancien régime* in secret is critical.

Secret authoritarian legacies have a way of undermining successor regimes even years after the transition. For instance, collaborators of the former regime may have engaged in acts that under a new democratic regime could tarnish their reputation. If these acts remain secret while former collaborators rise to positions of power, they may be blackmailed by those who threaten to release their "skeletons in the closet."

To illustrate this point, consider the following case from Poland. In February of 2016, the widow of Czesław Kiszczak, the former chief of communist Poland's secret police, discovered a thick secret police file containing evidence that Lech Wałęsa, Nobel Peace Prize Laureate and former Solidarity leader, had collaborated with the communist secret police between 1970 and 1976. The revelation raised serious concerns about the quality of Wałęsa's presidency, which had ended before Poland implemented its lustration law.[9] Although Wałęsa's collaboration preceded his career as Solidarity trade union organizer, Kiszczak could have pressured him to avoid implementing certain policies by threatening to release the compromising file. This left many questioning the extent to which he

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[9] A lustration program would have vetted Wałęsa for connections to the communist secret police. Had it been in effect when Wałęsa ran for or held office, his political career could have ended had he falsely maintained his innocence.

represented interests of the electorate instead of those of the former secret police. More generally, it left scholars wondering about the prevalence of such acts of blackmail. How often did former authoritarian elites pressure their former spies into following their policy preferences over those of the voters? To the extent that one considers representing voters' wishes as a marker of high-quality representative democracy, the revelation left many wondering just how representative Polish democracy was of its electorate.

The arguments in support of the "Pact of Forgetting" and "gruba kreska" assume that TJ – the combined set of mechanisms designed to deal with past authoritarian legacies – cannot be democracy enhancing. The widely held belief is that TJ can at most promote reconciliation,[10] though any brooding in the past comes at the cost of delaying normal democratic processes, normal political cleavage formation, and party system institutionalization. In this book, I challenge the belief that one can and must choose between democracy and justice. First, I argue that democracies do not emerge in a vacuum. Legacies of former authoritarian states permeate the new polity through unsettled scores of human rights abuses, staff of former security agencies, and archives of the former secret police that list the names of collaborators of the authoritarian security apparatus.

Without TJ mechanisms that reveal ties of politicians to agents of the *ancien régime*, voters cannot recall from office dishonest politicians. The ability to recall such "bad" representatives is a key characteristic of representative democracy. Blackmailed politicians keep their true identity secret and respond to demands of blackmailers, threatening to expose *kompromat* instead of their own constituents. According to the argument I present in this book, revealing evidence of human rights violations and collaboration with members of the *ancien régime* prevents former authoritarian elites from influencing policy in new democratic polities. Where transparency is lacking, former authoritarian elites can pressure politicians into policy concessions by threatening to reveal compromising information that could jeopardize these politicians' careers.

Not all forms of authoritarian dominance are as transparent as repression (King et al. 2013; Mattingly 2019; Nugent 2019; Tyson 2018). In many instances, the very acts that sustained the authoritarian regime were secret collaboration (Blaydes 2010), cooptation (Magaloni 2006), and

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[10] However, see criticisms of the reconciliation goal that hold that it is too ambitious and imposes a collectively shared belied about the truth of past events instead of allowing competing, conflicting narrative of that past Muller (2002).

sabotage (Dragu & Przeworski 2019). A key aspect of dealing with the secret acts of supporting the *ancien régime* is the disclosure of such actions and the revelation of the identities of collaborators, spies, and saboteurs. This transparency class of TJ mechanisms, revealing who among persons holding public office collaborated with the secret police to the detriment of the antiauthoritarian opposition are often left out of classical critiques of TJ, but they ensure the honesty of politicians and the ability of parties to be broadly representative. This book will show that transparency mechanisms (lustration and truth commissions) have a critical impact on who selects to enter politics and how well they are able to perform once in office. Such transparency mechanisms can improve the quality of representation by bringing policy proposals closer to the preferences of the median voter than keeping skeletons in the closet would. When transparency mechanisms reach deeper into society, they can help curb wide-scale political corruption.

Because transparency regimes regulate when and how skeletons in the closet are released, they have implications for the quality of democracy and the success of the democratization project. If democracy survives, damaging information collected by the former authoritarian secret police for the benefit of authoritarian elites may, if kept secret, turn elected politicians into clients of blackmailers who threaten to reveal their skeletons in the closet (Nalepa 2010*b*). Forgiving and forgetting may sabotage elected politicians' capacity to represent voters, a phenomenon that is hard to pick up on by studies focusing on the immediate aftermath of a transition. That is why in this book, I adopt a long time horizon to evaluate if mechanisms of dealing with the past are indeed working. The empirical span of my analysis reaches even decades into the democratization project.

In sum, there is no "gruba kreska:" New democracies do not have the luxury of separating themselves from the past with a "thick line" and starting with a blank slate. There are cobwebs of former authoritarian regimes everywhere. Some of them are secret and these must be, as this book will argue, exposed. What about the other legacies that are perfectly transparent?

The old regime relied on an enforcement apparatus and staff of the state administration. These networks are not secret, but dealing with them is no less consequential. The opening quote of this book underscores the dilemma of the administrative crisis that new democracies face: Who should run their state? On one hand, there are both normative and practical cases to be made for removing the Franz Mauers, the agents of the *ancien régime*. On the other hand, there is a clear trade-off to purging

the state and replacing existing actors with new agents: inexperienced people, lacking expertise. How can new democracies, emerging out of recent authoritarianism, construct a government that will be accountable and yet proficient?

For a different context, consider the case of Tunisia- until recently, the trailblazer of countries that transitioned during the Arab Spring. Zine El Albidine Ben Ali's predecessor, Habib Bourguiba, was famous for appointing all state administrators from among loyalists of the authoritarian party, Neo-Dustur. To ensure that none of them became strong enough to dethrone him, he frequently reshuffled persons at the top. The result of this was a bureaucracy with a very poor skill set. Ben Ali, in contrast, professionalized his governing apparatus and enforcement agencies. In sharp juxtaposition to Ba'athist states in the region, where positions were awarded according to partisan status, Ben Ali developed a cadre of professional bureaucrats.[11]

To sustain his dictatorship, Ben Ali also relied for support on his police forces. This was necessary because, according to Safwan Masri, the army had "neither the power or political will" to quell the protests against the regime (Masri 2017). According to numerous accounts, in the critical moment of the protests, Rachid Ammar (chief of staff of the armed forces) outright refused orders to fire on protesters (Henry 2007). Later during the transition, it was the army that would provide cover for the protesters, while security forces under command of the interior minister fired on protesters.

Political alignments of authoritarian enforcement agencies also have consequences for how new democracies should conduct TJ if their goal is to stabilize democracy. Following the Tunisian transition, the security forces were thoroughly purged by the new democratic minister of interior, Farhat Rajhi.[12] Meanwhile, the army was largely left intact; their loyalties were clearly with the new democratic government. However, the issue of the police is more complex. As later events showed, Tunisia became the leader in the Middle East in terrorist attacks and supplying fighters to Syria (Macdonald & Waggoner 2018). Arguably, this happened because of Tunisia's weakened internal security forces after the firing of Ben Ali's enforcement apparatus.

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[11] This should in no way distract from Ali's authoritarian methods.
[12] According to a March 7, 2011 decree issued by the Interior Ministry, the secret police and security apparatus were abolished "to bolster freedoms and civil rights" and to eradicate "outdated institutions that are vestiges of the regime."

This book will show why banning known agents of the *ancien régime* may, under certain conditions, damage democratic quality. A purge of open collaborators removes agents whose expertise may be of use in the new democratic state. Although such agents may use this expertise to advance their own goals, if they are not purged and these goals are transparent to the new democrats, there may exist ways of harnessing this expertise in the service of the new regime.

Tunisia's case stands in sharp contrasts with that of Bolivia where the military was actively involved in propping up authoritarian governments from 1964 until 1982. After the transition, the past was dealt with very mildly. Following a general amnesty for political prisoners, the only mechanism for acknowledging the past was a short-lived truth and reconciliation commission.[13] After two years, and one year before the expiration of its mandate, the commission was disbanded. It took more than a decade before criminal sentences against one of the military dictators and over forty of his collaborators were handed down. The absence of TJ until then could be attributed to the strength of the military at the time of transition, but it is not uncommon for reckoning with the past to take place even when the military is strong (Greece being a leading example here). Moreover, the strength of the Bolivian military, which would have shielded them from TJ, does not explain why purges did not extend to other sectors of the Bolivian state.

A more plausible explanation for the absence of purges in Bolivia is that even though the collaborators of the military dictatorship were not ideologically aligned with the new democratic forces that took over power in Bolivia, they were the only ones who knew how to operate the state. In other words, they were kept in place because dismissing them would result in loss of valuable expertise.

In sum, while there are normative reasons and clear pressures from public opinion to hold accountable those who in the past engaged in human rights abuses, such punishment may not be feasible and at times, may even be counterproductive. New democracies may need the expertise of bureaucrats and cynical agents of the past regime, and may even be forced to keep in office a disliked loyalist of the *ancien régime* if his loyalty comes with much needed expertise. As I argue in this book, the pressing project for new democracies is to learn to harness usable skills of agents of the *ancien régime* when their political alignments do not make them a liability.

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[13] The National Commission for the Investigation of Forced Disappearances was established by Presidential decree within just days of the transition on October 28, 1982.

At the same time, the universe of former dictatorships abounds in cases where agents of the state held their appointments, thanks to nepotistic ties to the ruler. With nothing to offer but their loyalty, these known collaborators of the state can be easily dispensed with as they have no expertise to offer. In fact, keeping them employed risks the reemergence of authoritarian networks in the new state. The presence of these networks manifests itself in the concentration of political and economic influence, and it permeates new democracies, for instance, in the form of oligarchical networks in Eastern Europe. Such oligarchical cliques are made up of none other than members of the communist nomenklatura who were well positioned to capture the wealth of the privatized state (Grzymala-Busse 2007).

In this book, I depart from the normative and backward-looking approach to TJ according to which the rationales for engaging in or forgoing these policies are retribution or reconciliation. Instead, I pursue a forward-looking argument. First, I argue that making public the secret information that former autocrats could use to influence policy-making in the new democracy should improve the quality of representation. By formally reconstructing the blackmail mechanism that transparency mechanisms undercut, I uncover circumstances under which politicians deliver their mandate and avoid pressure from former authoritarian elites. This allows me to answer the key question: Are states that engage in uncovering secret collaborators of the former authoritarian regime better off than states that do nothing? Second, I look at the effects of firing staff from agencies of the former authoritarian state and of disbanding state agencies. I point to the fact that such purges are not universally beneficial to new democracies. Some new states need the expertise of *ancien régime* agents. Some may take advantage of the fact that preferences of the state agents are not misaligned with those of the new democrats because they were never really loyal to the outgoing dictator.

The remainder of this introduction is organized as follows. Section 1.2 organizes the concepts that will be used in this book. Sectons 1.3 and 1.4 describe the book's contributions to social science, including the Global Transitional Justice Dataset. Section 1.5 offers a road map of the book.

1.2 CONCEPTS AND MECHANISMS OF TRANSITIONAL JUSTICE

The mechanisms of dealing with the past that were described earlier fall into the broad category of TJ, which refers to ways in which new

democracies reckon with their former authoritarian past. According to Kaminski et al. (2006), TJ refers to the "formal and informal procedures implemented by a group or institution of accepted legitimacy around the time of transition out of an oppressive or violent social order, for rendering justice to perpetrators, and their collaborators, as well as victims." (p. 295). The first association that many readers may have with TJ is the criminal trials of those, who in the name of an authoritarian ideology, committed atrocities. Indeed, the event that founded the very discipline of TJ was the trial of Nazi perpetrators in Nuremberg (Teitel 2003). This association is strengthened by the outstanding efforts of scholars to document trials and amnesties of perpetrators of human rights violations around the world and to organize them in easily accessible datasets.[14]

In this book, my focus is not on trials but on personnel TJ – that is, non-criminal forms of TJ. For democracy to even have a chance to consolidate, and for peace to have a possibility of taking hold, those responsible for human rights violations must at minimum be removed from office. Trials go further. They actually hold those responsible accountable for what they did in the past. Personnel TJ – lustration, truth commissions, and purges – can be interpreted as a first step in the direction of accountability. Before trials can take place, the leadership of the former regime must first be removed from positions of power.

This book will look closely at two kinds of mechanisms: purges and transparency regimes. The key difference between the two is whether new information is uncovered in the process.

I will call purging the act of banning from office a *known* offender. Purges come in two forms. First, a purge can be *thorough*, whereby every member of an organization created by the former authoritarian regime – the security apparatus, the military, the police, or the department of justice for example – is fired. Sometimes the entire agency is disbanded. The East German secret police, popularly referred to as the "Stasi," was purged in this way following German Unification in 1990. No former Stasi officer retained his or her position. Instead, domestic surveillance operations were taken over by West Germany's *Bundesamt fur Verfassungsschutz*, the Federal Office for the Protection of the Constitution (Vilasi 2015).

Instead of disbanding an entire authoritarian agency, one can also limit a purge to the leadership of that institution or organization. I will refer

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[14] See for instance Mallinder (2008); Olsen et al. (2010) and most notably Sikkink and Walling (2007); Dancy and Wiebelhaus-Brahm (2018), and the ongoing efforts of the Transitional Justice Research Collaborative (TJRC): Dancy and Montal (2017).

to this type of purge as a *leadership purge*. Typically, these policies are termed "decommunization" (Holmes 1994), "denazification" (Capoccia 2015), or "de-Ba'athification" (David 2006). In 2003, de-Ba'athification prevented 185 members of Saddam Hussein's party from running for the legislature (David 2006). An example of a decommunization bill is the Albanian legislature's creation of a commission to reassess law licenses issued by the state's former communist government. The law had the potential to apply to all persons licensed by the state as lawyers. Initially, the special commission revoked the licenses of forty-seven lawyers.[15] Among the disqualifying conditions were membership in top committees of Albania's Labor Party (the authoritarian communist party) and having graduated from the Faculty of Law at the state's postgraduate school for training communist cadres.[16]

Among what I call transparency regimes, the first mechanism investigated in this book is *lustration*, which vets candidates for public office for ties to the former authoritarian secret police. An example of a lustration law is Poland's April 1997 bill, which required all candidates running for office to declare in advance of the elections whether they had spied on their fellow citizens for *Bezpieka*, the secret police under the communist regime. Former spies who owned up to their collaboration were allowed to run for office, but the information on their collaboration was revealed to voters at the time they cast their ballots. Negative declarations were forwarded to the Lustration Bureau of the Institute of National Remembrance (IPN), which attempted to reconcile them with evidence from Bezpieka's archives, also housed at the IPN. Failure to confirm the declaration would result in a lustration trial. Such a trial could produce a formal declaration that the politician was a collaborator, and the politician in question could end up being banned from running for public office for up to ten years (Nalepa 2010*b*).

The United States' Congress passed a similar provision to the Polish statute after the end of the civil war. The law required that persons who wished to carry out "certain occupations" (including the practice of law) subscribe to an oath that they had never "offered aid to the rebellion." Subsequently, in 1866 in a case called *Ex Parte Garland*, the supreme court struck down the provisions dealing specifically with the disbarring

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[15] These licenses were subsequently returned after the Constitutional Court struck down key provisions of the law.

[16] See amendment to law Nr. 7541 from December 18, 1991, "On advocacy in the Republic of Albania."

of former members of the Confederate government from practicing as attorneys.[17]

A second type of mechanism that I classify as transparency regimes is truth commissions. These are bodies appointed by the government of a newly democratic state or of a state that has recently recovered from civil strife to disclose the nature of atrocities committed during wartime or under a dictatorship. Truth commissions share many characteristics with lustration. First, both deal with truth revelation. To the extent that truth commissions reveal embarrassing information with the potential of ruining a politician's career, truth commissions and lustration have a similar effect on the quality of representation.

Consider, as an example, the El Salvadoran truth commission, which between July 13, 1992 and March 15, 1993 investigated serious acts of violence occurring since 1980. Victims filed 22,000 complaints with the commission. Sixty percent of these complaints concerned extrajudicial killings, 25 percent involved disappearances, and 20 percent pertained to torture (many complaints alleged more than one form of violence). State agents were found responsible for as much as 85 percent of the violence. The commission attributed "only" 5 percent of the responsibility to the rebel group Farabundo Marti National Liberation Front (FMLN), the leftist paramilitary organization. The report then went on to name specific individuals responsible for the abuses and recommended the disqualification of any culpable military men and civil servants from public employment.

Although some truth commissions stop short of explicitly banning from office perpetrators that have been found guilty of human rights violations, shaming alone can have a powerful effect. If the public condemnation of such acts is strong enough, the mere revelation of the wrongdoers' names can effectively destroy their political careers. Relatedly, revealing the truth about the authorship of human rights abuses prevents the blackmail of perpetrators holding public office at the hands of those in possession of incriminating evidence. A well-functioning truth commission deprives anyone in possession of information about "skeletons in a politician's closet" of the ability to extract concessions in exchange for keeping the embarrassing – or worse, incriminating – information secret. Hence, truth commissions share with lustration laws the prevention of blackmail and enhance democratic representation that way.

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[17] See 71 U.S. (4 Wall.) 277 (1867).

TABLE 1.1. *Transitional justice mechanisms discussed in this book*

| | Nature of collaboration | |
Reach into the population	Secret	Open
Leaders	Lustration	Leadership purges
Leaders and rank and file alike	Truth commissions	Thorough purges

Truth commissions are also similar in format to lustration because they are government-appointed institutions and so carry with them more legitimacy and credibility than do grassroots or NGO-inspired processes of gathering data about past human rights abuses.

In light of all of the aforementioned similarities, I refer to truth commissions and lustration jointly as transparency mechanisms. The capacity of lustrations and truth commissions to add transparency stands in sharp contrast with purges – thorough or leadership-restricted – as the latter deal with overt collaboration and membership in authoritarian and criminal political organizations. Together, these four TJ mechanisms, portrayed in Table 1.1, constitute the institutions for reckoning with the authoritarian past and civil war legacies that I focus on in this book.

The columns of Table 1.1 underscore why it is important to distinguish between the vetting of open and secret members and collaborators of the *ancien régime*. The mechanisms through which transparency and purges affect the quality of democracy in the long term are not the same. In a nutshell, politicians who have in the past been *clandestine* collaborators of the authoritarian regime or authored atrocities secretly can be blackmailed by those who have credible access to information on these "skeletons in the closet." Needless to say, if the public still cares about what happened in the past, the revelation of such skeletons could end a politician's career. In return for their silence, individuals in possession of this evidence can demand rents or policy concessions. Regardless of the currency in which the ransom is paid out by the blackmailed politician, the quality of democracy suffers.

In contrast, purges deal with known collaborators. Getting rid of members who ran the agencies of the former authoritarian regime is like ruling without bureaucrats; here one can think of administrative purges as the reverse of a delegation problem. If a new politician comes into office and carries out a thorough purge, he is forced to implement policy in inherently uncertain conditions: without the expertise of people who used to run the agencies of the *ancien régime*, he cannot know how policy implementation will be affected by states of the world unknown to him.

Conversely, a decision to forgo a purge can be thought of as the equivalent of delegation to an agent who is equipped with expertise and thus able to adjust policies to the state of the world.

The "reach into the population" dimension (the rows of Table 1.1) is no less important, particularly when it comes to the temporal impact of TJ mechanisms. Thorough purges, in contrast to leadership purges, apply a blanket rule to workers of the former authoritarian state. Because of this collective responsibility, the reach into the population of thorough purges is greater as some workers of state agencies are fired even though they personally bear no responsibility for the regime's transgressions. Leadership purges only extend to those rank and file members of the state who participated in the regime's transgressions, however these are defined. Thorough purges typically appear early in the transition. Leadership purges, however, can stretch out long after the transition.

A comparison of lustrations and truth commissions reveals variation along these same dimensions. There is no place a perpetrator of humans rights violations can hide from a truth commission with a sufficiently far-reaching mandate. Not being in the spotlight of public office does not keep one's name from being mentioned during a hearing or as part of a report. In contrast, the operation of lustrations is limited to elites. Even though who is considered an elite and who is not can vary from one lustration law to the next, those who want to avoid having their skeletons in the closet exposed may simply forgo running or holding the positions to which lustration extends. In practice, this could mean that lustration works slower than truth commissions. However, this depends also on what the recommendations of truth commissions are and how well they are implemented (Zvobgo 2019*a,b*).

1.3 THE CONTRIBUTIONS

The discussion above underscores the role TJ mechanisms play in determining who is selected into political office. Lustration disincentivizes former collaborators from running for office. Purges are more explicit, because the fire those with direct (leadership) or indirect (thorough) links to the *ancien régime*. Despite this, neither the literature on candidate selection nor the literature on political economy of bureaucracies has paid attention to authoritarian legacies.[18] This book will bring legacies of the *ancien régime* to the forefront of understanding democratic stability.

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[18] Indeed, when political economists talk about purges, they restrict their attention to authoritarian purges (Jiang & Yang 2016; Montagnes & Wolton 2019).

The literature on democratization, save for a few exceptions that deal mostly with party systems (Grzymala-Busse 2002; Pop-Eleches 2007; Pop-Eleches & Tucker 2011; Riedl 2014), has also failed to appreciate just how important authoritarian legacies are. Authoritarian regimes and their democratic successor states are, for the most part, studied by separate groups of scholars.

On the other hand, scholars are consumed by the debate between retribution and reconciliation (Encarnacion 2014). The first contribution of this book is to stress the role of authoritarian legacies in new democracies, and particularly the importance of these legacies in regulating who works for the new state. This also breaks with existing research on TJ, which has focused on the normative imperatives of dealing with crimes committed in the past. Because of this normative framing, TJ literature has not been able to appreciate that dealing with transgressions that have not even been made public may be more important than reckoning with known perpetrators of the *ancien régime*. The forward-looking orientation of this book fills that lacuna and brings to light just how threatening secret legacies of authoritarian rule are to the new democratic state. Thus, by explaining how TJ regulates selection into office, I also contribute to the literature on democratic backsliding.

Second, this book explains how TJ affects how politicians behave in office conditional on being elected, appointed, retained. This question belongs squarely in the comparative democratization literature. In the last twenty-five years, scholars of comparative democratization have shifted their focus from studying democratic transitions to studying the quality of democracy. This phenomenon is associated with the proliferation of hybrid regimes – that is – regimes that hover between autocracy and democracy (Levitsky & Way 2010). Hybrid regimes are states that employ democratic procedures, such as elections (Gandhi & Lust-Okar 2009), constitutions (Ginsburg & Simpser 2013), and legislatures (Jensen et al. 2014; Wright 2008), but are in fact ruled by closet autocrats (Chiopris et al. 2022). One of the central aspects of democratic quality is the question of programmatic representation. The contribution that my book offers to this literature zeroes in on the linkages between citizens and political parties. When politicians are blackmailed by those who threaten to release skeletons in their closet, they depart from the programmatic commitments they made to their voters.[19]

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[19] I define programmatic representation as running on platforms that are communicated to voters, being elected to office because of those platforms, and finally implementing the platforms upon being elected.

The nature of these linkages has a critical impact on democratic stability (Pop-Eleches 2010; Tavits 2005). Scholars have noted that parties in newer democracies rely on a number of strategies to build linkages with citizens; these strategies range from offering programmatic party platforms to relying on charismatic candidates or clientelism (Kitschelt & Wilkinson 2007). Mainwaring (1999) argues that under-institutionalized and fragmented party systems with volatile electorates are low-hanging fruit for populist political elites who wish to engage in clientelistic practices. The establishment of programmatic parties is hindered not only by a lack of adequate institutions, but also by the poor quality of political elites. The inexperienced politicians that characterize young democracies are simply more credible when promising private goods than when they promise policy. Establishing clientelistic ties is easier than competing for votes on the basis of programs (Keefer 2007). Political elites might also hold a monopoly on goods or services that the electorate wants to access, which also hinders democratic quality by, for example, reducing the competitiveness of elections (Medina & Stokes 2007). Yet, scholarship devoted to the nature of party–voter linkages and to the quality of representation has largely left out of consideration authoritarian legacies and TJ: It is not clear why there are neither theories nor tests of how dealing with former authoritarian elites and their secret legacies affects the ability of politicians to represent voters. My book fills this gap by showing that blackmail with secret files hurts representation unequivocally.

My third contribution is to the literature on delegation. Notice that the dilemma facing a new politician is familiar to students of delegation or principal–agent models. The agent – in this case, the ex-authoritarian bureaucrat – may have preferences that are so divergent from those of the principal (the new democratic politician) that he uses his expertise to implement the policy he himself prefers. On balance, this policy outcome may be worse for the principal than his own implementation, even when it is lacking in expertise. There is a familiar trade-off between the expertise the *ancien régime* bureaucrat can offer and the extent to which loyalty to the previous regime renders his services a liability. The specific TJ context that makes this dilemma particularly interesting is that both of these features – expertise and preference divergence – have roots in the preceding regime. I will investigate how the mode in which the authoritarian state appoints bureaucrats influences the former state agent's expertise and alignment with the new democratic principal. The final factor I will model is uncertainty, which is one of the key features of regime transitions. Some transitions are more uncertain than others. For instance, in the context of

postcommunist transitions, not only political regimes but also economic systems underwent an overhaul. In light of this, the delegation problem in the context of post-authoritarian purges offers a unique opportunity to apply an old, if not somewhat stale, literature to a completely different area of social science.

1.4 A NOVEL APPROACH TO COLLECTING TRANSITIONAL JUSTICE DATA

Though not a theoretical contribution, a non negligible by-product of my research is the construction of a new transitional justice dataset. In order to test the implications of my theory, the Transitional Justice and Democratic Stability Lab that I direct has constructed the Global Transitional Justice Dataset comprising of a time series cross-section of TJ events in all post-authoritarian and post-conflict states since the end of World War II. Despite a growing number of empirical studies examining the broad impact of TJ on democratic stability and peace (Olsen et al. 2010; Thoms et al. 2010; Van der Merwe et al. 2009), there is a knowledge gap pertaining to the impact of purges and transparency regimes on the long-term quality of democratic representation. I devote an entire chapter (Chapter 4) to explaining how my own dataset fills this lacuna.

In a nutshell, the greatest problem with existing datasets is that they reduce sometimes complex progressions of a TJ proposal through the legislative process to a single data point. The danger of this oversimplification is illustrated in Figure 1.3, which presents data on TJ mechanisms as a time series of *positive* and *negative* events for six countries that I will use as archetypal cases throughout the book: Bolivia, Poland, Tunisia, South Korea, South Africa, and Spain.

To allow for better understanding of the figure, I clarify what positive and negative events are using the example of lustration. I define a positive event as the submission of a lustration proposal to the floor of the legislature, the passage of such legislation, the upholding of such legislation as constitutional by a supreme court, or the overturning of a presidential veto against such legislation. I define a negative lustration event, in contrast, as the voting down, vetoing, or striking down by the constitutional court of lustration provisions. Similarly, expanding the set of persons targeted by lustration or broadening the set of "offenses" (where "offense" is defined as secret police collaboration) to include more past or present positions constitutes a positive lustration event, whereas attempts to narrow the set of targets or "offenses" are negative lustration
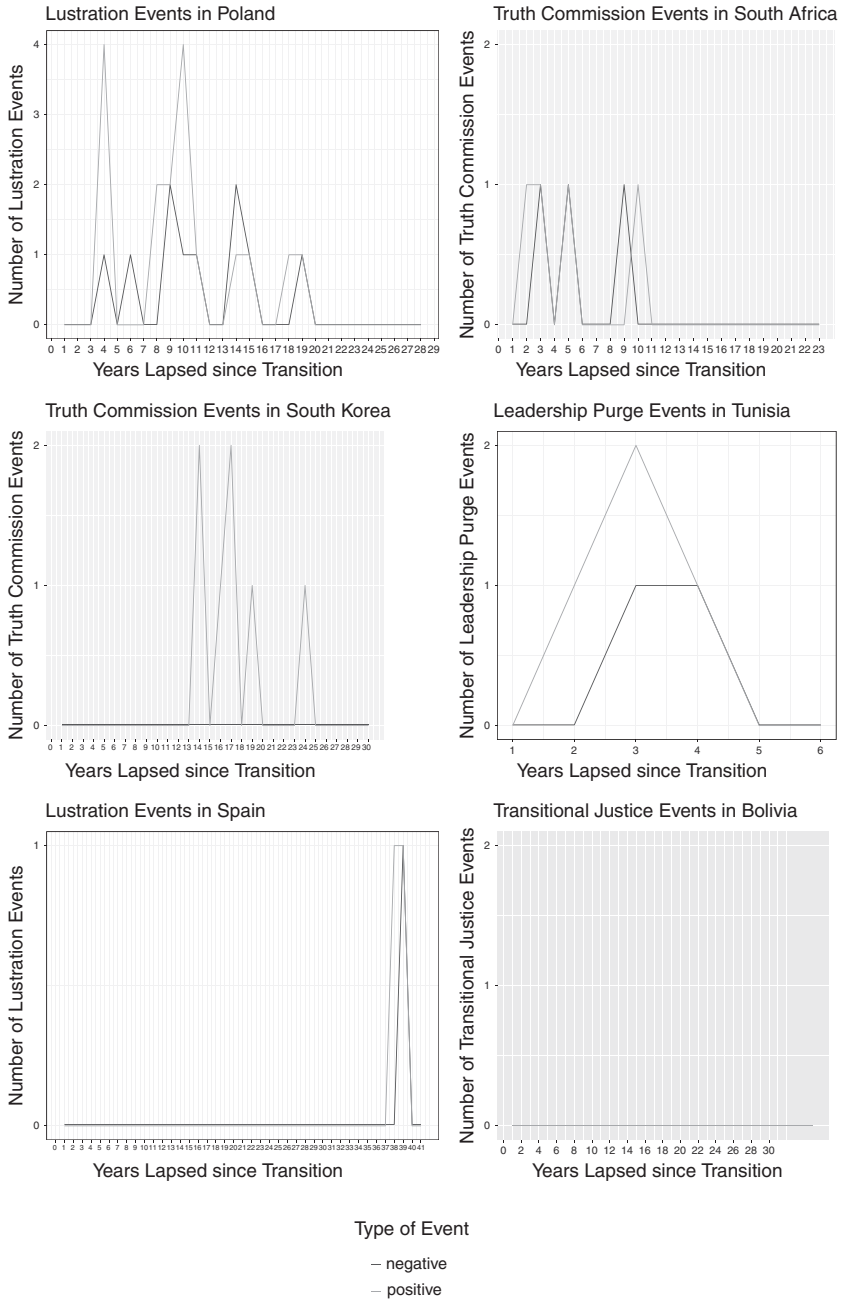
FIGURE 1.3. Severity of transitional justice mechanisms in archetypal country cases of the book
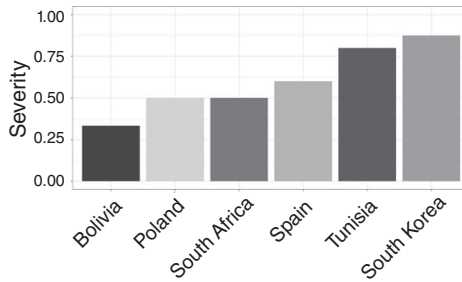
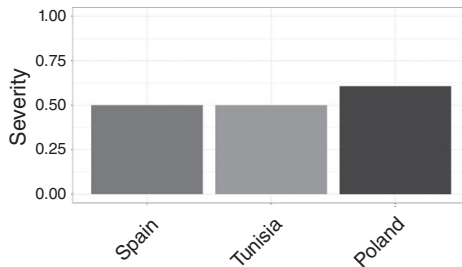FIGURE 1.4. Truth commissions in archetypal countries

FIGURE 1.5. Lustrations in archetypal countries

events. Positive and negative events in truth commissions, thorough purges, and leadership purges are defined similarly. I will argue that ambiguities in the extant empirical research stem from data collection strategies that are not sensitive to the temporal dimensions of TJ: when and for how long personnel TJ has been implemented. My data brings scholars a key step closer to understanding the impacts of personnel TJ.

Figure 1.3 shows data for lustration in Poland and Spain, truth commissions in South Africa and South Korea, Leadership Purges in Tunisia, and TJ in general in Bolivia.

These figures also disaggregate TJ events over time. Figures 1.4 through 1.7 use the progression of positive and negative events over time to create a summary statistic (TJ severity) for each of the four mechanisms using the Global Transitional Justice Dataset interactive tool. I show the severity[20] of the four personnel TJ mechanisms in the six countries that I will use at various stages of this book to illustrate my argument (countries with zero severity have been omitted from each figure).

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[20] "Severity" is defined as the ratio of positive transitional justice events of a certain type to the total number of events. The full justification for this measure is provided in Chapter 4.
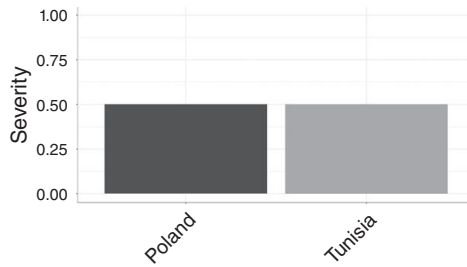
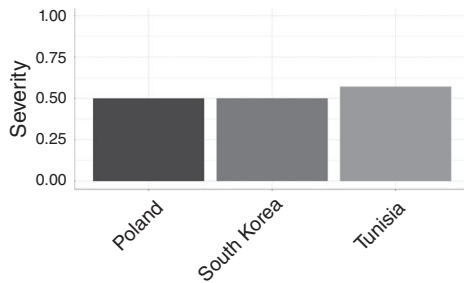FIGURE 1.6. Thorough purges in archetypal countries

FIGURE 1.7. Leadership purges in archetypal countries

The figure 1.6 two panels illustrate the severity of lustration and truth commissions; the figure 1.7 two illustrate the severity of purges. Countries with no events of a certain type are omitted. We see that Tunisia had the highest severity of truth commissions, although it did engage in all four transitional justice mechanisms, including lustration. In fact, the severity of lustration in Tunisia was almost as high as in Poland. Poland, as Tunisia, had all four types of transitional justice events; however, among transparency regimes, it engaged in lustrations instead of truth commissions. Further, it invested slightly less in leadership purges than Tunisia did (Figures 1.4 through 1.7).[21]

Interestingly, South Africa, most famous for its Truth and Reconciliation Commission (TRC) established after the negotiated transition to democracy in 1994, has only experienced truth commission events, and

[21] As a side note, Tunisia's leadership purge score is somewhat deflated by the fact that many of its leadership purges took place before its first elections (and so do not qualify as transitional justice, using the selection criteria discussed in Chapter 4). The Global Transitional Justice Dataset, for instance, does not include the removal of "30 top police officers removed by the Ghannouchi administration" on February 2, 2011 (Preysing 2016).

the severity of those events is only at 0.5 (on a scale from 0 to 1), a stark contrast with, for instance, Tunisia, at 0.8. This is consistent with the reconciliation orientation of the South African TRC whereby, through a confession, perpetrators were granted amnesty from criminal prosecutions.

Notable here is also Spain, which *despite* the "Pact of Forgetting," embraced transparency regimes in the form of both lustrations and truth commissions. Yet, as Figure 1.3 indicates, this happened relatively recently. The case with the lowest scores on any of the TJ mechanisms studied in this book is Bolivia. Indeed, this dearth of TJ is the rationale behind including this case as a more detailed illustration of the phenomena in question. The only transitional justice mechanisms used there were truth commissions, and these events only reached a level of severity equal to slightly over 0.25.

The theoretical argument of this book is that TJ measures that focus on information revelation are very different from the ones that are designed to purge people. Data from the Global Transitional Justice Dataset can also be used to empirically justify this difference. Figure 1.8 shows the disaggregation of TJ into purges – that is, dealing with known forms of collaboration with the *ancien régime* or engagement in human rights violations – and lustration and truth commissions – that is, uncovering formerly secret forms of collaboration and human rights violations. The left panel of Figure 1.8 plots the total number of positive TJ events net of negative events as a function of time lapsed since the transition (left/upper panel) and as a function of the year in which the transition took place (left/lower panel). Here, all transitional justice events have been pooled together, and there appears to be no relationship between TJ and two variables that ought to be good predictors of TJ: time lapsed since transition and year of transition (Barahona de Brito et al. 2001; Elster 2004; Huntington 1993).

However, once we disaggregate the TJ mechanisms into purges (thorough and leadership), lustration, and truth commissions, a clear pattern emerges. Consider first the lower right panel of Figure 1.8, illustrating positive TJ events net of negative events for the four mechanisms as a function of transition year. Lustration prevails in countries that transitioned around 1990, which tend to be the Eastern European ones (Albania, Bulgaria, East Germany, Estonia, Hungary, Latvia, Poland, Slovakia, and Slovenia), as previous scholarship has speculated.[22] There

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[22] See De Greiff and Mayer-Rieckh (2007); Ellis (1996); Closa Montero (2010); Letki (2002); Stan (2013); Stan and Nedelsky (2015). Note, however, that there are also
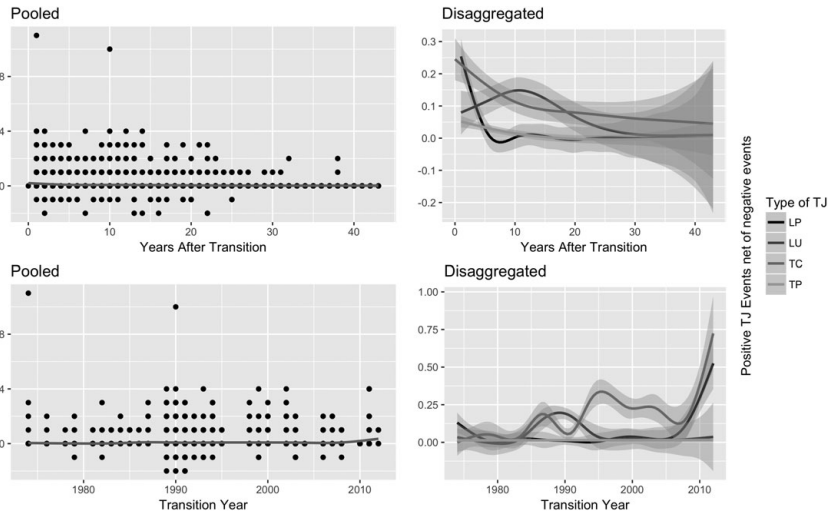
FIGURE 1.8. Disaggregating transitional justice data

is also an uptick in truth commissions around the beginning of the third wave of democratization, but in contrast to lustration events, truth commission events trend upward again in countries with mid-1990s transitions as well as in countries transitioning around 2010.[23] This is consistent with the scholarship on truth commissions: Truth commissions abound in South America (in Paraguay, Ecuador, and Peru) and Africa (in Kenya, South Africa, and Liberia); they can also be found in Indonesia and East Germany. (United States Institute of Peace 2011*b,a,h,e*; Gibson 2006; United States Institute of Peace 2011*f,c,d*).

The story with purges is quite different. First, the occurrence of thorough purges is flat across the range of transition years in my dataset. If they do occur, they appear in the immediate aftermath of a transition (notice the slight uptick on the left end of the upper right panel of Figure 1.8). Leadership purges, on the other hand, seemed to be more popular in the beginning of the third wave transitions (in Latin American countries that transitioned in the seventies and eighties) and their popularity seems to be increasing again after 2005. As in the case of thorough purges, they are concentrated in the early post-transition years.

The insight from the upper panel of Figure 1.8 is that the timing of lustration clearly differs from the timing of purges. While purges – both

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instances of lustration in other countries. A deeper look into my data reveals that these other countries include Argentina, Spain, and Guatemala.

[23] These include the Arab Spring countries, Tunisia and Egypt, as well as several countries in South and Southeast Asia.

thorough and leadership – take place in the immediate aftermath of transitions to democracy, lustrations peak about ten years following the transition. Truth commissions are implemented soon after the transition or conflict termination but continue to be implemented longer than purges or lustration.

In sum, patterns of purge activity stand in contrast to patterns of lustration and truth commission activity. Similar inferences can be drawn from the GIS-coded version of my data in the form of world maps illustrating severity (and also volatility and urgency) of lustration, truth commissions, and thorough and leadership purges in appendix G.[24]

1.5 ROAD MAP

This book is organized as follows. Chapter 2 presents a formal model that focuses on how lustration can prevent blackmail, arguing that transparency regimes, such as lustrations and truth commissions, have a positive effect on the long-term quality of democratic representation. I capture the blackmail potential of "skeletons in the closet," understood here as evidence of collaboration. If left in the hands of former agents of the *ancien régime*, these "skeletons" can undermine democratic representation. The model uncovers the extent to which implementing transparency regimes can mitigate this danger. Transparency regimes accomplish this by making bluffing more difficult by lowering the a priori belief that embarrassing secrets may still be in the hands of the blackmailers. A more normative implication of this model is that transparency regimes do not always work the way advocates of forward-looking arguments for TJ would want them to. In some equilibria, blackmail with secret police files occurs even without evidence. Yet, an identity result presented in this chapter shows that no matter what the equilibrium, departure from perfect representation always declines with the severity of the transparency regime. This model serves as a baseline relative to which we can now evaluate the consequences of dealing with open collaborators via purges.

Chapter 3 presents a formal model of purges to clarify why the effects of purges on the long-term quality of democracy are quite different from the effects of lustration. To capture the dynamic of administrative purges, I make use of an old workhorse of models of bureaucracy: the delegation model. In order to compare the effect of lustration with that of purges,

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[24] They are also available at an interactive website: https://tinyurl.com/ybmcj7hf.

the model's results are stated in terms of the same outcome variable as in the model of lustration blackmail: the quality of democratic representation. The model builds on the literature on delegation in American Politics but crucially shows that purging more is not always better for representation. New democracies face trade-offs between using the *ancien régime*'s agents' expertise to reduce noise around policy implementation and facing the possibility that these agents have preferences misaligned with new democratic leaders.

The models presented in Chapters 2 and 3 share a dependent variable – the quality of representation. At the same time, important differences exist between them: The model of lustration deals with secret collaborators and informers who were often not members of the formal authoritarian state (indeed, as the case of Lech Wałęsa indicates, they were frequently dissidents *fighting the authoritarian state*). The consequence of "doing nothing" about secret collaborators is running the risk of electing representatives that will be held hostage by what they did in the past; the model of purges, in contrast, considers known members of the former authoritarian state. Here, the challenge is that of staffing post-authoritarian bureaucracies and law enforcement with competent, yet not disloyal agents. In some instances "doing nothing" is the optimal choice for democratic stability.

The introduction to Part II of the book summarizes the empirical implications of my theory and discusses the empirical strategy for testing it.

Chapter 4 is devoted to a discussion of the data that operationalizes independent variables of this book: the Global Transitional Justice Dataset. Since no existing datasets differentiate between open and closed forms of collaboration, my data collection first separates transparency regimes (truth commissions and lustration) from purges (thorough and leadership-only). In addition, however, I code TJ data as a time series of events. This strategy permits for the use research designs that allow to causally identify the effects of TJ. It also allows me to develop original measures of personnel TJ characteristics: severity, which is used throughout the book, as well as urgency and volatility. Using these measures, I show other differences between the Global Transitional Justice Database and other existing TJ data collection efforts.

In Chapter 5 the blackmail model is tested with a hierarchical model where the units of analysis are political parties nested within post-authoritarian states. This is an appropriate strategy because lustration is an elite-centered transparency regime with most of the affected elites concentrated in political parties. Truth commissions are dispersed in

their reach, but act faster than lustration. This characteristic allows me to use a design that accounts for change over time. Hence, to examine the effects of truth commissions, in Chapter 6, I use a difference-in-difference design. Identifying the causal relationship between personnel TJ and quality of democracy is crucial because it is highly plausible that the same characteristics that lead a country to embark on a TJ program may be the ones that down the line allow it to enjoy a high quality of democratic representation. Models using this design consistently identify a causal relationship between truth commissions and democratic quality.

Moving on to testing my theory of purges, recall that one of its key findings is that not all states can embark on purges because at times, the loss in expertise is too great to conduct a purge even when the ideological distance between the bureaucracy of the *ancien régime* and the new succeeding democrats is large. In light of this, some countries simply cannot afford to implement purges at all. This calls for a statistical modeling approach that accounts for some authoritarian regimes (those with low institutionalization) selecting into purges, while others refrain from purge activity. This is the subject of Chapter 7.

Chapter 8 does not test any additional theories, but introduces one new dependent variable: de facto survival of authoritarian elites in parties, the state, and business. This is also a variable constructed in the Transitional Justice and Democratic Stability Lab. This chapter examines how the four personnel transitional justice mechanisms shape actual elite survival. Also, in this "taking stock" chapter of sorts, I consider all mechanisms together. Yet such a "horse race" analysis should be interpreted with caution as it does not speak to the underlying conditions and authoritarian legacies that shape possibilities for transitional justice. This book argues that because each mechanism deals with a different class of *ancien régime* collaborators these mechanisms are not really substitutes. Purges can never perform the function of lustration and truth commissions and vice versa. Nevertheless, this chapter empirically corroborates an important difference among transparency regimes. Namely, the effect of truth commissions on democratization becomes apparent sooner, but fizzles out over time as truth commissions' operation continues. Lustration, on the other hand, seems to require surpassing a certain threshold of intensity before positive effects on the quality of democracy come to fruition.

Chapter 9 draws conclusions and discusses the normative limitations of transparency mechanisms. Increasing the ability of politicians to represent by revealing everyone's skeletons in the closet comes at the cost of exposing the raw and unfettered personal relationships for what they are.

While they learn whether their politicians can be trusted, citizens of new democracies also find out who among their friends, family, and coworkers spied on them. At the same time, open collaborators, such as the cynical Franz's of the former law enforcement apparatus, are allowed to stay on and continue their careers. The democracy-enhancing use of TJ appears normatively disturbing. Yet transparency regimes are far from being "ritual sacrifices." They regulate who becomes a politician and how politicians behave in office. Truth commissions make polities less corrupt while lustrations are better at dissociating political power from economic power and allow politicians to represent voters more faithfully. The effect of purges is more complex as even the feasibility of purges depends heavily on the institutionalization of the previous authoritarian regime, but refraining from purges is often democracy-enhancing.

The overall conclusion is to categorically discredit the virtues of the so-called Spanish Model of transitional justice. Letting sleeping dogs lie, particularly when it comes to yet-to-be-revealed crimes perpetrated by former autocrats, is exactly the wrong way to go about dealing with the past.