

Transitional Justice and Human Rights

Francisco Villamil

War, peace, and political violence

UC3M, Fall 2023

**WEATHER**

WEDNESDAY—Cloudy
THURSDAY—Fair
Full Report, Page 8

The Boston Daily Globe

Reg. U. S. Pat. Off.

BOSTON, WEDNESDAY MORNING, AUGUST 15, 1945—EIGHTEEN PAGES

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Printed in U.S.A.

PEACE AT LAST



TRUMAN'S VICTORY GRIN—President is in jubilant mood as he holds Japanese surrender message received at 6:17 p. m., EWT, yesterday.

Truman Accepts Jap Unconditional Surrender Ending Bloody Pacific War—Gen MacArthur to Receive Nippon's Capitulation for Allies; Joyous Hysteria Sweeps the United Nations

By ERNEST BARCELLA

WASHINGTON, Aug. 14 (UP)—Peace came to the world tonight when President Truman announced that Japan has accepted unconditional surrender and Allied forces have been ordered to cease firing.

Gen Douglas MacArthur, "the man who came back," was named Supreme Allied Commander to receive the formal Japanese surrender.

World War II—bloodiest conflict in all of human history—was at an end, except for the formality of signing surrender documents.

Transitional Justice

- **Transitional Justice** is a set of policies employed in the aftermath of war or regime change (democratization)

Mechanisms of TJ

- Criminal trials



Nüremberg Trials

- First *international war crimes* tribunal in history

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- New ideas: crimes against humanity, crimes against peace
 - Different from old *jus in bello*

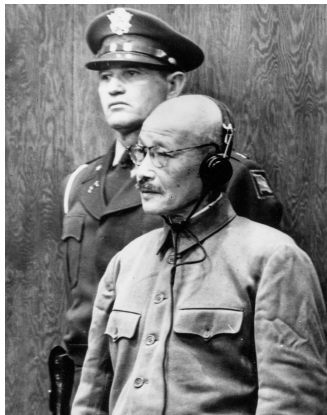
Nüremberg Trials

- First *international war crimes* tribunal in history
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- Importance of the Holocaust

Nüremberg Trials

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

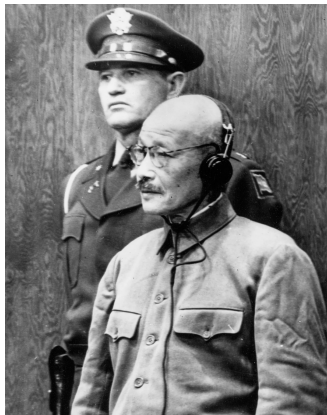
Tokyo Trials



Hideki Tojo, 1948

Tokyo Trials

- Same as Nüremberg?
- The case of Kōki Hirota
(only civilian sentenced to death)
- 'What the Tokyo Trial Reveals About
Empire, Memory, and Judgment'



Hideki Tojo, 1948



© Paul Vrecker, AFP, 13.2.2002

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

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

© 1 December 2017



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

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



Ante Gotovina trial



RICARDO DARÍN PETER LANZANI



ARGENTINA, 1985

A FILM BY SANTIAGO MITRE

ARGENTINA, 1985. Producción de LA CÁMERA DE LOS ASESINOS / BUENA VISTA / BUENOS AÍRES / BUENOS AÍRES / PETER LANZANI / ARGENTINA, 1985. ALABANDA PRODUCTIONS. Producción de RICARDO DARÍN.
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prime video



KENYA



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



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



Euskadi en tregua

EL PAIS SEMANAL



Otro Goya para Paco Rabal

EL ESPECTADOR



Alucinación en Córdoba

EL VIAJERO

Pinochet, detenido en Londres a petición del juez Garzón

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

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

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

Horas antes, en Madrid, el juez Baltasar Garzón había firmado una orden de detención de Pinochet cursada a través de Interpol. Garzón y otro magistrado, Manuel García Castellón, esperan desplazarse en los próximos días a Londres para interrogar a Pinochet sobre algunas de las 1.101 desapariciones de adversarios políticos sucedidas durante sus 17 años de gobierno. Es probable que acaben pidiendo su extradición. "Los dictadores nunca acaban bien", declaró hace unos días Pinochet a la revista *New Yorker*, anticipando sus problemas.

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

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Páginas 2 a 4 / Editorial en la página 14

Dopaje libre en farmacia española

La EPO, el fármaco con el que se hizo la prueba de dopaje en Francia a médicos y ciclistas, también está presente en las farmacias españolas, según ha comprobado el juez Garzón. El fármaco, que según ha comprobado el juez Garzón, no está sujeto a ningún control y puede adquirirse sin receta médica, lo que es un problema para el control de dopaje. El fármaco está prohibido incluso con receta.

Mechanisms of TJ

- Criminal trials

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 - vs. **Amnesties**: we might not see it as a 'TJ mechanism', but state leaders usually do

Mechanisms of TJ

- Criminal trials
 - vs. Amnesties: we might not see it as a 'TJ mechanism', but state leaders usually do
- Reparations



Universal Declaration of Human Rights

Article 8

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



Published 2021

City Hall

REPARATIONS
NOW

Red &
White &
Reparations
Wood, Tulsa, Oklahoma

BLACK
LIVES
MATTER



Mechanisms of TJ

- Criminal trials
 - vs. Amnesties: we might not see it as a 'TJ mechanism', but state leaders usually do
- Reparations
- Lustration

Poland: Tough Lustration Law Divides Society



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

Related



Polish Archbishop Resigns Amid Spying Allegations



Romanian President Says Communist Regime

Lustrations



¡VIVA ESPAÑA!

Comisión Provincial Depuradora del Magisterio

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

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

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

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



NO. OF COMMUNIST PARTY MEMBERS IN U.S.A. UNDER DISCIPLINE FROM FEBRUARY 1950 - 38,779
ESTIMATED NO. OF FELLOW TRAVELERS 390,000

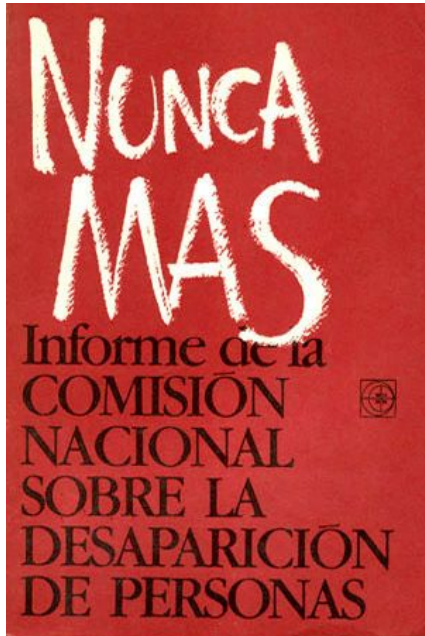
NO. OF COMMUNIST PARTY MEMBERS IN U.S.A. UNDER DISCIPLINE FROM FEBRUARY 1959 - SLIGHTLY OVER 25,000
ESTIMATED NO. OF FELLOW TRAVELERS
- 1959 - SLIGHTLY OVER 250,000

SECRET
RESTOR FULL SECURITY

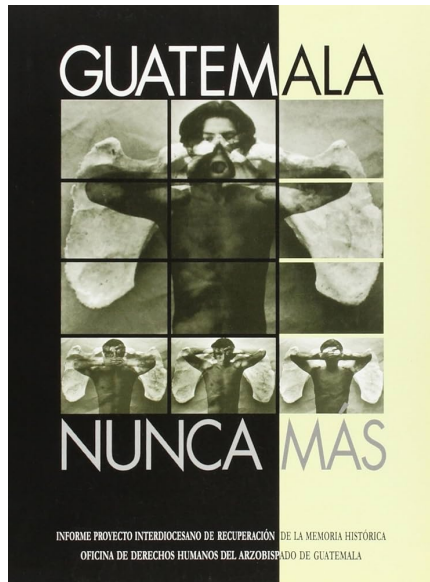


Mechanisms of TJ


- Criminal trials
 - vs. Amnesties: we might not see it as a 'TJ mechanism', but state leaders usually do
- Reparations
- Lustration
- Truth



Argentina (1984)



Guatemala (1998)

A group of people are standing behind a long table in a room with red curtains. A large white banner hangs above them with blue text. The banner reads "TRUTH AND RECONCILIATION COMMISSION" in large letters, followed by "HEALING OUR PAST" in a smaller font with a double underline, and "FIRST HEARING - EAST LONDON 15 - 18 APRIL 1996" at the bottom. The people are dressed in formal attire. A man in a dark suit and glasses is holding papers. A man in a pink clerical suit with a gold cross is standing next to him. Other people are standing behind them, some looking towards the camera and others looking down. There are microphones and papers on the table in front of them. The South African flag is visible on the right side of the image.

TRUTH AND RECONCILIATION COMMISSION

HEALING OUR PAST

FIRST HEARING - EAST LONDON 15 - 18 APRIL 1996

Víctimas mortales de la guerra civil en Euskadi



TODAS MUJERES HOMBRES

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Abad Ángulo, Florentino
Abad de la Cruz, Casimiro
Abad Escolar [Escobar], Félix
Abad Fernández, Jesús
Abad Huerta, Víctor
Abad Romero, Ricardo
Abad Ruiz de Olano, Luis
Abad Torre, Francisco

Aceval Amilibia [Acebal Alcubilla],
Domingo
Acevedo Aloyo [Alonso], José
Acevedo Alvarez, Manuel
Acevedo Caballero, Santos
Aceves Asumendi, Jesús
Acha, Domingo
Acha Aguirre, Antonio
Acha Aldaiturriaga, Mateo

Aguinaco Sáenz de Cortázar, Segundo
Aguinaga Arrizabalaga, José
Aguinaga Barinaga, Marcelino
Aguinaga Beguiristain, Casimiro
Aguinaga Bilbao, Antonio
Aguinaga Ingunza, Valentina
Aguinaga Lecuona, Florencio
Aguinaga Otegui, Juan Bautista



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

Buscador de víctimas

[Buscador de fosas](#) [Buscador georreferenciado](#)

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

Nombre

Primer apellido

Segundo apellido

Fosa de inhumación

Comunidad autónoma

Provincia

Localidad

(todas) ▾

(todas) ▾

Localidad

Buscar

Borrar

Buscador de mapa de fosas georreferenciado

Mapa de fosas



Listado

Mapa

Modo accesible

Búsqueda

Información de la fosa

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

Descripción

- No intervenida
- Desaparecida
- Exhumada parcial
- Exhumada total
- Traslada al valle de los caídos
- No especificado

Mechanisms of TJ

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





Spain exhumes Franco's body, ending long legal battle

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

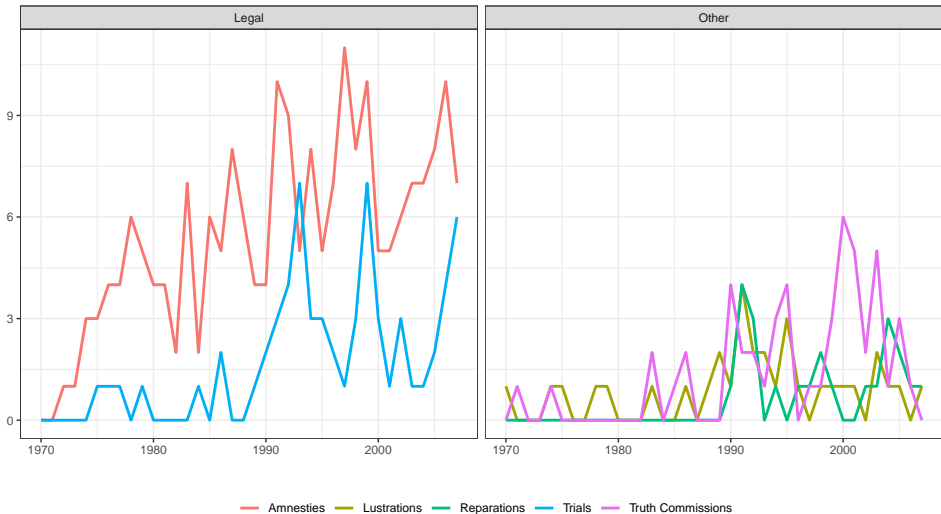


Franco's grandsons and other family members carry the coffin of the former Spanish dictator after his exhumation at the Valley of the Fallen basilica near Madrid on Thursday © EPA/Shutterstock

Mechanisms of TJ

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

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



- What do you think are the goals of TJ?

Questions

- The causes of TJ policies

TJ and human rights

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

How did human rights develop?

- We live in a world where human rights are the **norm**

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- But it was not always like that

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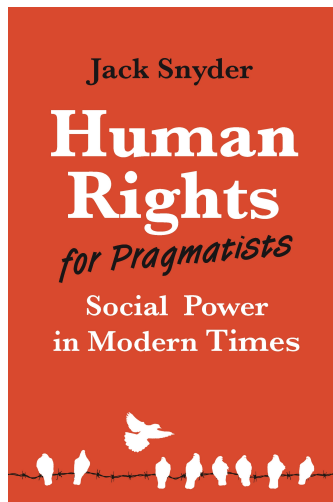
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 - Enlightenment and Reformation
 - Post-WWII

How did human rights develop?

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

Power leads, rights follow

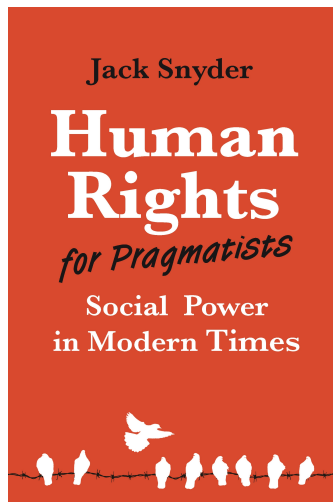
- Human rights are all about liberal modernity



Jack Snyder (2022)

Power leads, rights follow

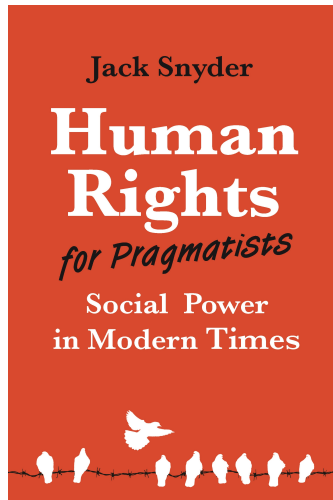
- Human rights are all about liberal modernity
- Only when **middle classes** emerge and become strong, forming **winning coalitions**
 - Historical role of the emergence of a trading class in Northern Europe and Protestant Reformation
 - Setbacks during the 20th Century



Jack Snyder (2022)

Power leads, rights follow

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



Jack Snyder (2022)

Snyder (2022) theses

1. HR are *beneficial* for modern economic production and governance
→ vs. tradition based on favoritism and patronage

Snyder (2022) theses

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→ if there is a winning coalition *against* them, HR no longer in place

Snyder (2022) theses

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4. Promotion as part of an ideology and culture
 - vs. persuasion → institutionalization
5. This is all a gradual process
 - there are no short-cuts

Snyder (2022)

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

Snyder (2022)

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

International norms and political change (Finnemore & Sikkink 1998)

- Importance of *norms* and the way they **change**
 - Norms are not the opposite of strategic rationality

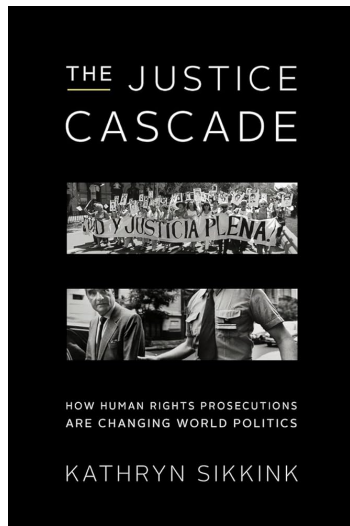
International norms and political change (Finnemore & Sikkink 1998)

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International norms and political change (Finnemore & Sikkink 1998)

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

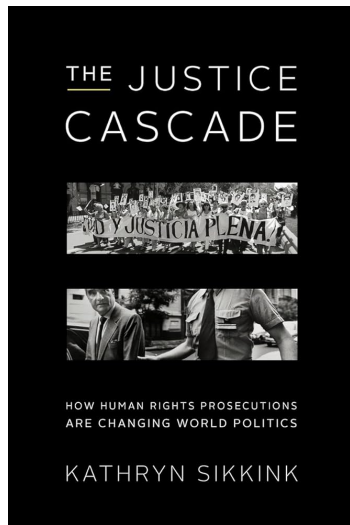
The Justice Cascade



Kathryn Sikkink (2011)

The Justice Cascade

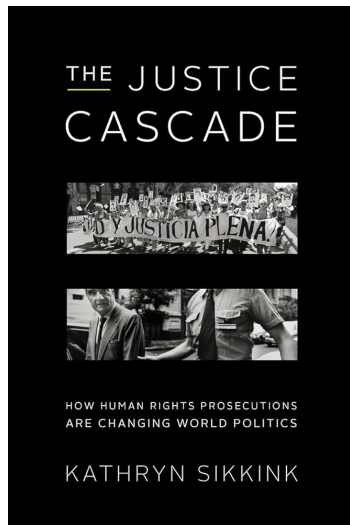
- Development of **HR accountability** norm at the international level
 - individuals should be accountable to their actions in legal criminal courts



Kathryn Sikkink (2011)

The Justice Cascade

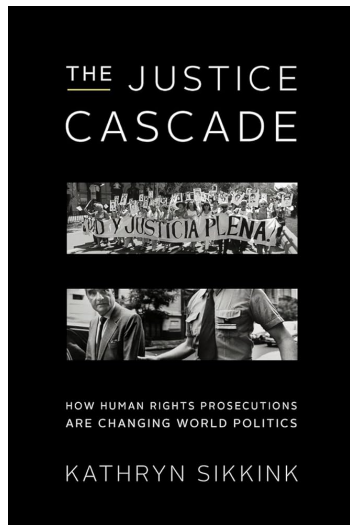
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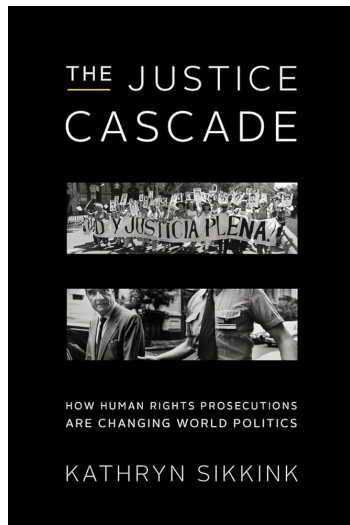
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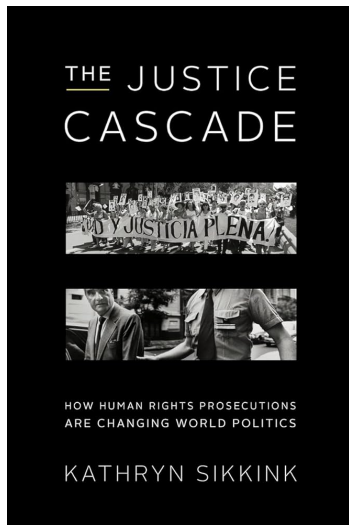
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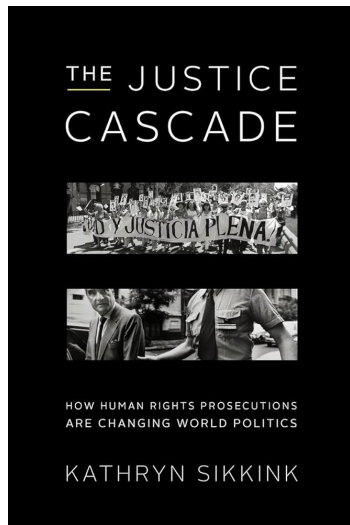
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- Individual criminal accountability, vs:
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 - State accountability
- Spread of domestic, foreign, and international courts - and the legal backbone



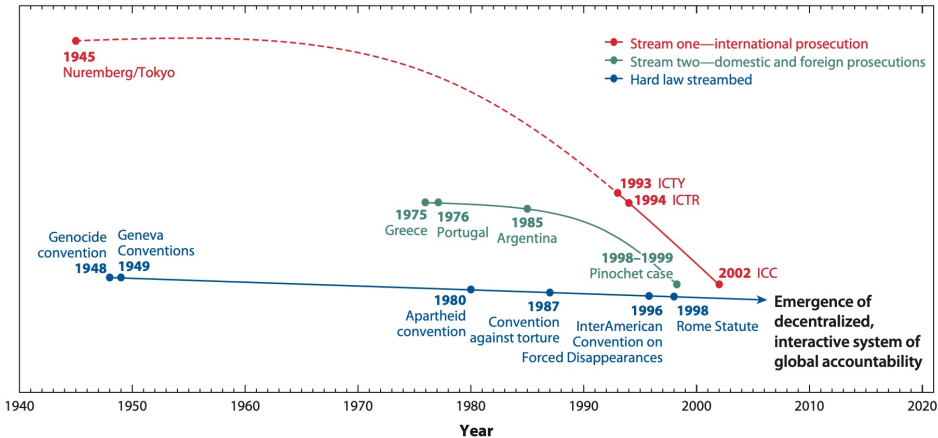
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The Justice Cascade

- Development of **HR accountability** norm at the international level
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- Individual criminal accountability, vs:
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- Spread of domestic, foreign, and international courts - and the legal backbone
- Role of **individual actors**: activists, lawyers, NGOs, etc



Kathryn Sikkink (2011)



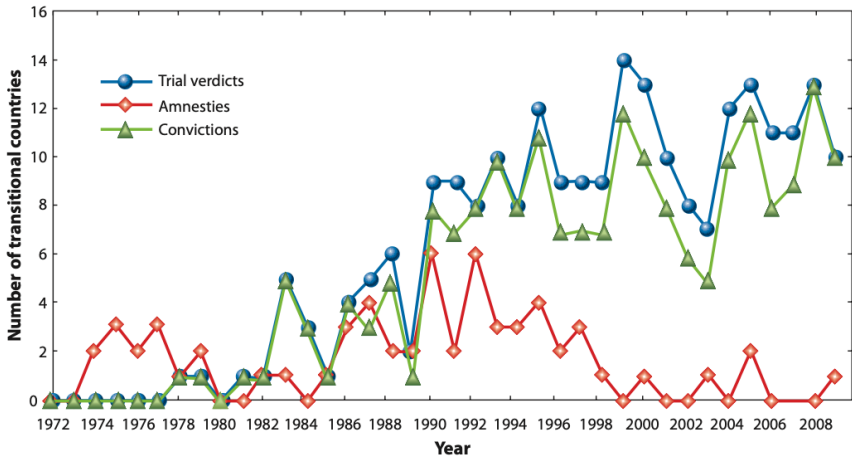
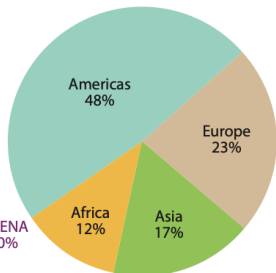


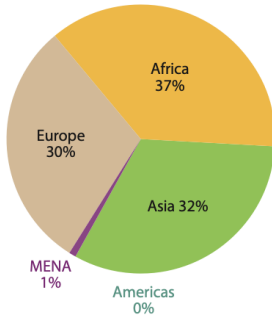
Figure 1

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

a Domestic prosecutions



b International prosecutions



c Truth commissions

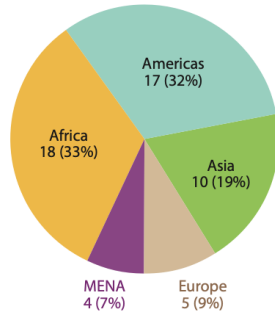


Figure 2

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

Questions

- The causes of TJ policies
 - emergence of human rights *norms*: how and why?
 - determinants of domestic policies: what explains that some countries apply them?
 - role of international factors in explaining TJ diffusion?

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- The consequences
 - what are the consequences at the elite-level?

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 - effects at the *micro*-level? (reconciliation, etc)