

'Forced to Be Free': Globalized Justice, Pacted Democracy, and the Pinochet Case

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The attempt to prosecute former Chilean President Augusto Pinochet has been primarily viewed through the lens of 'globalized justice', the erosion of traditional state sovereignty, and the empowerment of 'global civil society'. By contrast, this article argues that the Pinochet case is as much about popular sovereignty as it is about transcended borders or universal rights. Though operating in the language of the eighteenth century German philosopher Immanuel Kant, victims-as-'global citizens' are very much focused on their status as *national citizens* and on their contribution to a Rousseauian project of social contracting. The issue is one of redefining the 'general will' to include their universalized *and* particularized conceptions of justice, and thus 'forcing' their country – *in absentia* – to be free. In fact, it is the collision of an international context of cosmopolitan liberal consensus on individual rights with the *domestic* preference for stability before justice reflected in the pacted transition model that animates the logic of such a strategy. The second part of this analysis, which applies the theoretical framework to the Pinochet case and its evolution abroad and at home, will appear in a subsequent issue of the journal.

For those who have followed the circumscribed yet widely celebrated Chilean transition to democracy, the extraordinary sequence of events set off by the arrest of General Augusto Pinochet in London in October 1998 has served to both condemn and exonerate the transition process and its limited parameters. Caught off-guard, internally divided, and realistically sensitive to the potential for a reassertion of direct political power by the military, Chile's governing coalition of Christian Democrats and Socialists (known as *Concertación*) arrived at a legalistic defence of Chilean sovereignty as its main argument for repatriating the ageing former dictator.

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At the same time, the arrest warrant for crimes against humanity issued by Judge Baltasar Garzón of Spain's Audiencia Nacional and the landmark decisions of the British Law Lords rejecting Pinochet's claims to immunity together implied that Pinochet's alleged crimes were theoretically beyond national jurisdiction. It was as if his prosecution was beyond the political will of Chile's leaders and the practical limitations of its compromised national judicial system.

This second implication carried a deeper and more troubling message for the Chilean leadership. Its 'transition from above', engineered by legal means by Pinochet and accepted by the opposition as a means to an end, was itself ostensibly judged wanting on moral grounds by the 'international community' that sought to take matters into its own hands. The price paid for entrance into democracy, in the form of authoritarian enclaves and legal prohibitions on retrospective justice embodied in Pinochet's 1978 amnesty law and 1980 Constitution, potentially undermined Chilean claims to sovereignty – defined as the right to decide internal matters according to internal law – in equal measure to the unorthodox transnational nature of the arrest. The general's defiant levitation from his wheelchair and march across the tarmac upon being returned to Chile's capital, Santiago, on humanitarian grounds reinforced the widespread belief that Chile's foundational 'pact' guaranteed Pinochet's permanent impunity.

And yet, six months later, what Chilean author Ariel Dorfman emotionally characterized as 'impossible ... improbable ... [and] entirely unbelievable' happened: Chile's own Supreme Court, by a decisive vote of 14–6, upheld an appeals court ruling stripping Pinochet of his senatorial immunity from prosecution and opening the way for Judge Juan Guzmán Tapia to charge him in the infamous 'Caravana de la Muerte' case.¹ What is more, during the year that the case prospered – and despite Pinochet's obstructionist tactics regarding the court-ordered medical examination and the appeals court's reduction of charges from the active 'author' to the passive 'concealer'² – Chile's judicial system emerged looking more independent from *ancien régime* constraints than ever expected. From this new perspective, the deals made by the opposition back in the 1980s regained their lustre as the necessary first steps towards democracy. The action of the 'international community' could then be viewed less as a condemnation of Chile's political and judicial system than as a useful external source of pressure on the last authoritarian holdouts within that system, advancing globalized norms in a way that transcended and even reconfigured the entrenched battle lines of Chile's historically polarized polity.

What, as observers and analysts of democratization, are we to make of these contradictory messages? And, more specifically, what kind of lessons can be drawn from them by countries in the latter end of the so-called 'third

wave' of democratic advance, those standing to benefit from the ostensibly propitious context of increasingly globalized human rights norms and the much-vaunted post-Cold War pro-democracy consensus? These two questions are, arguably, inextricably intertwined. For the literature on democratic transition and consolidation is nothing if not explicitly didactic, offering detailed comparative case studies in the hopes of not only building theory through induction, but also suggesting practical lessons for application in the imperfect laboratory of real-world political transformation.³ Moreover, political elites are themselves seeking out these lessons, with or without the intermediation of 'experts' such as political scientists and sociologists, in the hopes that 'late late democratizing', like Gershenkron's 'late late industrializing', will allow them to adopt – or adapt – successful models without having to reinvent the proverbial wheel.⁴ The 'toolbox' of transitional methods most often employed – filled to the brim with sovereign prerogatives of domestic politics such as amnesties, truth commissions, and pacts – reflects both these 'lessons' and another one equally important. For the instrument must fit the particular historical, cultural, political and economic reality of the nation that is being refashioned as a *demos*.

In similar yet opposing fashion, the Pinochet extradition attempt has led to an explosion of demands from human rights groups, most comprised of or representing victims of repressive regimes and their families, for a different model of transitional justice. That model demands individual accountability of leaders through criminal prosecution, if not at home then abroad. This latest innovation is predicated upon the development, on the one hand, of a burgeoning post-Cold War consensus among democratic states that universal values such as individual freedom and respect for human dignity must be internalized and enforced for a state to 'deserve' its sovereignty (and thus avoid international intervention). On the other hand there is a 'global civil society' able to organize across borders to influence states to act upon those universal values against any state using sovereignty as a shield. Bypassing the transitions literature and the school of 'hard knocks', which together have produced most of the relevant 'lessons' for late late democratizers, in the past two years the *particular* has lost out to the *universal*. This has led the way for citizens to escape the political and legal straitjacket of the *domestic* pact and its *local* jurisdiction, by seeking an *internationalized* venue capable of providing *global* justice based upon universal definitions of rights, and wrongs. In that sense, the Chilean government was justified in claiming that the Pinochet arrest violated its sovereignty – the arrest was based upon the legal and moral argument giving primary jurisdiction to the court willing and able to act upon universal principles. However, it could be argued that the lessons of the

Pinochet extradition attempt are as much about national and popular sovereignty as they are about transcended borders, globalized justice or universal rights. Though operating in the language of the eighteenth century German philosopher Immanuel Kant, when they seek to put an amnestied leader on trial these victims-as-‘global citizens’ are very much focused on their status as ‘national citizens’. As such their contribution to a Rousseauian (after Jean-Jacques Rousseau, 1712–78) project of social contracting: redefining the ‘general will’ to include their universalized *and* particularized conceptions of justice, and thus ‘forcing’ their country – *in absentia* – to be free.

This article begins with an analysis of this dilemma specific to the coincidence of globalization, democratic transition, and the transformation of sovereignty as a norm and an operational principle of international politics. Specifically, it traces the twin *universalizing* liberal paradigms of globalized markets (‘free money’) and individual rights (‘free subjects’), and discusses the mechanisms developed to enforce these universalizing norms in an international system still based upon sovereign states. Then, the analysis shifts from the universal to the *particular*, and more specifically to democratic transition as a highly contextualized process of reviving *popular* sovereignty, reinventing national identity, and re-endowing the affective as well as legal dimensions of citizenship. This will involve taking a critical look at the influential literature on ‘pacted’ transitions and its role in shaping what has been deemed possible, moral and valued in this community-building enterprise. Finally, the fundamental question of both processes – who decides? – is seen to become more complex once we consider the specific ways in which democratic transition has become internationalized via the transformation of sovereignty and the rise of the ‘cosmopolitan consensus’. Though many analysts emphasize the rise of ‘global civil society’ as state sovereignty wanes and identities and loyalties as well as crises and norms transcend borders, the framework adopted here emphasizes a different point. While victims’ groups may seek allies in non-governmental organizations (NGOs) and even legal jurisdictions across borders, they are simply using increasingly globalized means – some persuasive, others coercive – toward a traditional, domestic and local end. That end is of course about defining justice and citizenship within their own national political community.

The remainder of the account develops this argument via an examination of the two broad phases of the Pinochet case. The first phase (1996–March 2000) corresponds to the attempt to extradite Pinochet to stand trial in Spain, including the development of the case by the litigants and the reasoning for the arrest warrant by the Spanish judge, Baltasar Garzón, and the British Law Lords. Although ostensibly the moment of greatest

transcendence for universal jurisdiction and universalized notions of rights and justice, this phase also had profound impacts at home in quite particularized ways, specifically related to the normative valuation of Chile's pacted system and the various 'pacts of silence'. Those pacts had inhibited the development of true popular sovereignty a full decade after transition. Moreover, it will be shown how both the Chilean litigants and their legal arguments operated on two levels simultaneously: reasoning universally to prosecute Pinochet, and reasoning particularly to bring the Chilean people out of the shell that kept them protected but not free.

The second phase (March 2000–July 2001) refers to the post-London repatriation of the Pinochet case and the surprising, if incomplete, way in which it was taken forward through the Chilean courts. Employing the concept of 'policy transfer' to analyse the voluntary and coercive dimensions of transnational lesson-learning, the article demonstrates how the particular domestic context becomes the venue for the enforcement of universal norms via their incorporation into a new 'general will' – one that challenges the legal and moral standing of the amnesty and the pact that protects it. Finally the second part to the article will offer three broad sets of lessons of the Pinochet case in the realms of the coercive power of the cosmopolitan consensus, the statics and dynamics of pacted transition, and the fallacy of a 'placeless' globalization of justice.

Who Decides? – Sovereignty, Globalization and the 'Cosmopolitan Consensus'

Although much ink has been spilled to describe and analyse the 'age of globalization', the premise adopted here is that we are living today in an age of consolidating hegemonic global or cosmopolitan liberalism. We are on the brink of what might be called a 'cosmopolitan consensus' in political/legal values much in the style of the 'Washington consensus' on economic/market values.¹ Liberalism is defined here in terms of two complementary categories, each reproducing a set of domestic, transnational, and international relations that appear to be undermining the 'realist' view of an anarchic system of sovereign state units.

Political liberalism here connotes a philosophical system that places the rights and freedoms of individuals at centre stage, and makes their empowerment and autonomy without obstruction from or violation by the state both a political value and a moral good. Economic liberalism also focuses on individuals and the individuals' free will, but as exercised via their ability to participate in a free, competitive market with minimal intervention or obstruction from the state. Far from simply influencing the organization of small-scale local and national societies, the two strands of liberal ideology

have themselves shifted scale to the global level. And with the help of high technology and the dissolution of Cold War geopolitical barriers they have energized communities of human rights activists and international lawyers whose shared identity is based upon the value of inalienable individual rights not contingent upon citizenship. This is rather like the way that businesses and customers who are operating in increasingly deregulated free-market economic sectors have become transnationally integrated.⁶ From the liberal perspective, the actions and free operation of both of these communities have made national boundaries appear increasingly obsolete at best, and obstructionist of free human endeavour, at worst.

It may seem contradictory – especially in light of the confrontations between ‘global civil society’ and global capital at places like Seattle, Davos and Quebec City – to make this argument. However, it is important to point out both the inherent dialectical relationship between the two communities agitating for distinctive substantive interpretations of individual ‘freedom’ independent of state interference, and the underlying permissive and uncertain environment that has brought them into confrontation: the increasingly contested nature of sovereignty as a norm of international society. In other words, the question is who makes the rules when the state is no longer the sole, or even primary, source of law and authority. The rediscovery of sovereignty among political scientists in the past decade⁷ reflects something more than the intellectual challenge of mapping the uncertain contours of the ‘post-Cold War era’, and its proliferation of non-state actors and complex agenda items not limited to superpower confrontation. It reflects also a serious normative pondering of what the ‘new world order’ *should* look like and who *should* decide. The centre of this second debate is formed by the works of scholars who address the apparent shift in the source of authority from the domestic to the global, especially in the context of the relationship between global markets and national political communities.⁸ Scholars of international relations and international political economy take this debate a step further. They ask how, whether, and under what conditions international institutions arise to ‘fill the gap’ in governance, as states find their effective autonomy constrained by transnationalization of domestic life, or as individuals and groups transcend their disempowered or intransigent national governments to demand the enforcement of norms across borders.⁹

For the purposes of this argument, the debate highlights a crisis of the state as a form of political, economic and, above all, jurisdictional organization. State citizenship matters less, both because it has lost its purchase on government responsiveness, and because it can no longer limit individuals’ identification and political action beyond the physical and political boundaries of the nation. In turn, the genesis and enforcement of

laws based upon domestic value structures appear less connected to the societies they supposedly govern exclusively. If sovereign territorially-based states can (or should) no longer decide which values are to be reflected in policy and which laws are to be enforced, then who?

The answer devised by the cosmopolitan-liberal camp is inspired by the writings of Kant, in the notion of universalizing democratic governance through institutionalized legal structures at both the domestic and international levels.¹⁰ The rights of individuals, being the paramount value, are best enforced through democratic governance and the rule of law. At the same time, there must also be more than just local or contingent enforcement of these rights, but rather universal institutionalization through a legal order.¹¹ In Kant's theory, these two work in tandem, and in harmony. However, in the real world, the international level has been conceived of separately as an 'enforcer of last resort', recognizing that it is more than likely that states will fail to live up to international obligations in areas such as individual human rights.

With the opening provided by the end of the Cold War and the recent wave of democratic transition, Kant's original integrative framework has been revived, most notably by a newly-resurgent branch of international legal scholarship that has trumpeted the reciprocal necessity of democratic governance and international law in an emerging and normatively preferred 'liberal order'.¹² These scholars, in turn, have also reported on and given theoretical justification for what they call an emerging 'right to democratic governance' to be enjoyed by all individuals regardless of state citizenship. Leading this movement, legal scholar Thomas Franck has argued that this right is fast becoming a 'global entitlement' enforced by 'community expectations'. This means that governing elites now must accept that 'their legitimacy depends upon meeting a normative expectation of the community of states'.¹³ From this view, it is normatively corrupting and morally indefensible for international law to turn a blind eye to how a ruling group comes to power. For in the end, international law gains its own legitimacy through the representativeness of member states which create and enforce this law via international institutions and conventions.¹⁴ Thus, it is within the rights of those institutions to condition membership and other privileges on the democratic legitimacy of governments, and to intervene collectively to defend a member government against anti-democratic forces from within. In the Americas, a region long known for its prickly defensiveness regarding sovereignty and non-intervention, the signing of the Santiago Commitment to Democracy by the Organization of American States (OAS) in June 1991 was highly significant. It formalized that region's commitment to collective defence of democracy, which was transformed 'from a moral prescription to an international legal obligation'.¹⁵

It should be noted that this line of reasoning does not call for an international legal order to supplant the domestic. Rather, while it views international law as having precedence over domestic law because universal rights are paramount, it notes the need for a *particular kind of state* – a liberal democratic state – to be the instrument of enforcement, in the absence of international institutions. Of course, these same scholars favour the creation of those institutions. But they also take a more pragmatic view, seeking to use domestic jurisdiction for the enforcement of international law in the short term. And, as seen concretely in the institutional design and mandate of the International Criminal Court, they aim to devise global jurisdiction in a way that gives each country's legal system the opportunity to enforce universal law itself before jurisdiction is shifted 'upwards'. Still, what must be emphasized is that the 'cosmopolitan consensus' and its normative goal of a 'liberal' world order via 'liberal democracy' redefines the nature of state political legitimacy. Internal legitimacy is measured beyond its locally-forged popular sovereignty to include its expression of universal standards of legal protection of individuals. At the same time external legitimacy – whether a country 'deserves' its sovereignty, or its international legal right not to be 'intervened' – is contingent upon its form and practice of such universalized standards of democracy and human rights. As United Nations Secretary General Kofi Annan said:

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalization and international cooperation. States are now widely understood to be instruments at the service of their peoples and not vice versa. At the same time individual sovereignty – by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them ... If states bent on criminal behaviour know that frontiers are not an absolute defence – that the [security] council will take action to halt the gravest crimes against humanity – then they will not embark on such a course assuming the can get away with it.¹⁶

Using Robert Jackson's useful distinction,¹⁷ negative sovereignty – recognition by other states as a full member of the international system – has become more explicitly contingent upon positive sovereignty. Positive sovereignty means the ability of the government to meet the needs of the population, including its need for democracy, individual freedom and rule of law, or at least as that ability is judged by external as well as internal

actors and legal orders. Conversely, governing elites are now on notice – or quasi-legally bound by international agreements – and must accept that their own trespassing may be met with a collective response.

Who Decides? – The Particular in the Universal: Popular Sovereignty, the Social Contract and Pacted Democratic Transition

The internationalization of legitimation raises particularly acute dilemmas for elites and publics in the process of democratic transition and consolidation. Although the different literatures do not speak to one another often enough, peaceful processes of regime transition and violent processes of revolution are in reality two points on a spectrum of state formation and share a common purpose. That purpose is to reconfigure the identity of the state and the relationships between citizens and the state, and among citizens as fellow members of a polity. Understood this way, the major goal of new governing elites in these uncertain times is to symbolically connect the rationale for their rule – whether liberal-democratic or transformational-revolutionary – with *popular* sovereignty, or the consent of the governed. Although O'Donnell and Schmitter choose to separate out two distinct stages of transition by form (democratization) and content (socialization),¹⁸ in reality the first stage is very much about content, and about the winning of loyalty on an ideological or even emotional level as well as on a procedural level. Often, transition involves rebuilding a civil and political society whose breakdown into incivility and distrust undermined democracy in the past. At other times it involves the effective enfranchisement of marginalized groups who had never had the chance to participate fully in collective decision-making. The term 'rule of law' then takes on added content, as the revised answer to the questions of who makes the law and how it is enforced symbolize a new ethical basis for state legitimacy. Moreover, leaders in both democratic transition and revolution emphasize that the new order will contrast with the old by responding to and reflecting the will of the people rather than the power of the military, the church, the United States government or foreign corporations. The question of 'who is us' is thus at the centre of regime transition, and is in many respects the central work of that process.

Indeed, while the cosmopolitan consensus emphasizes Kant, it is Rousseau who comes more vividly to mind as one reads between the procedural lines in the literature on democratic transition.¹⁹ Transitions to democracy are, metaphorically speaking, moments when a new social contract is under review. They are moments when a notion of the common good is coalescing, and when institutions are being designed to reflect those points of consensus and to reinforce the new identification that is being

formed between citizens and the state. They are, as Rousseau implied, not only political and strategic moments. For they are also individually and collectively emotional, as each individual agrees to subsume his individual will to the general will and as such, ties his fate and his deepest personal aspirations and identifications with his fellow citizens.²⁰ In more recent transitions, the complicating factor of a conflictual, even tragic political past makes it doubly necessary for there to be what Rogers Smith has called 'constitutive stories' – idea-imbued narratives that effect the process of 'people-building' – to reconcile formerly divided parts of the citizenry to accept democratic rule. By implication that also means recognizing their equality as ethical persons before the law and their full inclusion in national identity.²¹ Rather than reflecting an embrace of universality, this model of regime transition emphasizes particularity, as a *particular kind of democracy*, suited to the formation of a new national identity from the raw materials of a complex and conflictual past in a particular place, is forged.

Smith's analysis, though aimed at understanding the forging of multi-ethnic polities, is also pertinent to understanding the operational and ethical appeal of *pacting* within both the literature and the practice of regime transition.²² Smith starts from the premise that all political communities are products of long, historical processes, and that those processes are shaped at key moments by 'asymmetrical interactions between actual and would-be leaders of political communities and the potential constituents for whom they compete'.²³ Leaders, or elites, are key to the people-building process. Likewise, the literature on transition also gives elites pride of place in two related processes, that of wresting power from the previous regime and that of gaining the acquiescence if not support of competing anti-democratic elites.²⁴ In much of the literature, in fact, popular mobilization is viewed as constructive only insofar as it can be used as a negotiation tool by elites. Otherwise it can easily get out of control and exacerbate polarization and breakdown.²⁵ At the same time, elites are also constrained in their bargaining by the limits set by 'potential constituents', and this, too, augurs for the moderation and 'least common denominator' style that will allow those elites to bring about democracy without social uproar. Pacting is not only a strategic choice, it is an ethical choice. It seeks the most change for the least cost to the most people: it values democracy above authoritarianism, but also procedural democracy as a necessary prior before other forms of justice. It also values compromise, moderation, negotiation and balance above confrontation, moral righteousness, and, most of all, vengeance.

In other words, following Smith's account, elites come up with the 'constitutive stories' that are then subject to the limits set by the pre-existing identities. These identities are, for many victims of repressive regimes and their families, tied to their sense of having lost their country, and their

citizenship, either formally through exile or informally through their experience of authoritarianism and its transformation of the polity. Meanwhile, regime supporters may have completely different identifications with 'the nation'. In the Southern Cone in the 1970s for example, the ideology of National Security created a 'civic religion' of sorts that justified internal repression of 'subversives' as protection of the nation's way of life. These people may not oppose democracy *per se*, but they cling as passionately as regime victims do to their beliefs about what was done in their name. Pacting elites recognize that healing these deeply-entrenched fault-lines is more often than not antithetical to their primary political goal and ethical value – rapid and secure regime change to electoral democracy. They realize that choosing one side over another in their 'constitutive story' only alienates the losing side at the precise time that it needs to be convinced that democracy is valuable because through its transparent competitive mechanisms it will be given the chance to win again.

This short-term choice – again, an ethical as well as strategic choice – has long-term consequences because of the form and content of the narrative strategy which is most often chosen to craft the 'constitutive story' of the new pacted democracy. Its form is forward looking. Pacting itself emphasizes the 'shadow of the future' in the sense meant by the literature on cooperation, as the incremental and mutually-reinforcing positive spiral in which each side knows that the 'game' will repeat and thus has an incentive to not allow the game to 'break down' by defecting.²⁶ This pattern is then projected onto the first election of the democratic system, and to each subsequent election, parliamentary vote, constitutional convention, economic pact involving labour and business, and referendum. Each experience with peaceful conflict resolution and democratic deal-making is a vote for continuing on the incremental, forward path towards consolidated democracy.²⁷

Being forward-looking also implies avoiding retrospection as the antithesis of the positive spiral of negotiated democratic transition. It is not that the new government rewrites the history of the past as much as it relegates it to the outer margins of *public* consciousness. The moral argument for such ahistoricism is similar to that supporting the abolition of capital punishment in Germany after 1945. A state which has once abused its judicial and police power to destroy its internal enemies (physically or psychically by denying the reality of their history) should not put itself in the position of abusing that power again. Can we not identify the wilful and manipulative refashioning of 'official histories' in many authoritarian and totalitarian regimes as an arm of state repression? A second justification is more temporal: that of pouring salt on an open wound. Would not the 'wounded' population need first to heal, and would not an open and honest discussion of this fraught topic have less extreme consequences once the

basic substrate of citizenship and democratic practice have been established?

Pacting, then, involves both the construction of a new future-oriented post-authoritarian 'constitutive story' and what might be called a non-story, a 'pact of silence'. The last deems certain aspects of history and their official standing to be off the public agenda. This is what the Spanish historian Paloma Águilar Fernández has criticized in her own country as an implicit pact to forget (*olvido*), ostensibly to prevent a repetition of the polarization that brought on the fratricidal civil war and the Franco dictatorship.²⁸ On a surface level, this strategy appears to have been successful, as Spain is viewed as 'the very model' of a pacting success story.²⁹ However, while Spain overcame initial instability and even escaped the main critique of subsequent Latin American pacts regarding the deficit of social and economic justice,³⁰ in what legal scholar Ruti Teitel categorizes as 'historical justice'³¹ Spain's pacting elites chose neither truth nor justice, but rather peace, stability and prosperity. These choices were made in order to reconceive Spain and Spanish citizenship in a way that appeared more inclusive. But in practice it was exclusionary in its denial of the past, as it symbolically narrowed the contours of national identity to include only those 'safe' feelings sanctioned by the official post-authoritarian narrative. The new government benefited from the general optimism and enthusiasm of citizens celebrating a new era of freedom. However it was also working consciously to channel those emotions forward, to create a *bounded euphoria* which would place inherent limits upon what citizens could reasonably expect from – and feel about – the new democracy.

The point here is that citizenship is about a feeling of belonging, and being valued equally and substantively by the government and by fellow citizens. It is substantive and procedural, and it is subjective as well as objective. The symbolic regaining of personhood and recognition, as well as formal rights such as freedom of association, are especially meaningful for victims of regimes that routinely 'disappeared' not only known opponents, but also tangentially-related individuals in order to sow a disconnection among members of society. Likewise, those democracies that follow regimes which actively manipulated history and rewrote the nation's identity according to their ideologies of national security have an opportunity and arguably an obligation to restore their fellow citizens to full equality before the law and within the political community. It is, however, the Spanish model of pragmatism and bounded euphoria that has won out more often than not. This owes to what are seen as irreconcilable differences within each individual society – particular wills, in Rousseau's terms, inconsistent with the formation of a general will among equals.

The most morally problematic – and almost universally appealing – of this model's many pacifying strategies is amnesty, which offers the new democracy a fictive 'original position' that allows individuals to 'contract' without the burden of a past. According to Ruti Teitel, amnesty symbolizes the transfer of sovereignty, since it is only the sovereign state that has the sole authority to enforce the law in its territory, and thus the monopoly on justice. Teitel also notes that there is a close historical relationship between transitional amnesty and 'liberalizing transformation'. Amnesties are implicitly conditional upon the acceptance by the previous regime of the new democratic order, while selectivity and 'restraint in the punishment power' of the state underlines 'the relation of exercises of mercy to the liberal rule of law'.³² And, of course, not all amnesties are the same. In Spain after Franco's dictatorship, amnesty was extended to people on both sides of the civil war, in order to emphasize the act as one of mutual rather than one-sided guilt or absolution.³³

What makes amnesty so attractive, and yet so morally fraught, is that it enables the new democracy to act as if its legitimacy were based upon the broad notion of the equality of citizenship in a reunited nation. Yet in practice it continues the division of the citizenship into those to whom the law is applied and those who escape its web of responsibility. Impunity, which lies at the heart of amnesty, extends its reach through time and space. A person will *never* be tried *here*, will never face the consequences of his past actions towards his countrymen, the geographic boundaries of the nation offering him protection and the moral boundaries of the nation drawn to fit his version of the past.

Impunity also extends in a third dimension, that of civic affect. Rousseau's individual contracts to the social group with the knowledge that all are equally bound both legally and morally, and all will be elevated as they are 'forced to be free' of the individual petty interests that keep the general will from being done. Impunity means that the social contract has been drawn up with a major caveat, and this empty space has its analogue in the continued spaces and silences that divide polities without a truly shared sense of self. To come to such a conclusion is not necessarily to condemn pacting elites outright. Rather it is to highlight the very *particularity* that makes it nearly impossible for them to observe *universal* rights claims above those of their *crafting* of a general will, narrowed by the very limited common space that exists as a divided society exits from an authoritarian period. This is why transition and revolution are at *opposite* ends of the same spectrum. The leeway of elites is much narrower, and the redefinition of 'the people' is far more circumscribed.

The future orientation of pacting yields significant limitations for justice that reach beyond transition. In the terminology of the field, pacting

transition operates self-consciously as a path-dependent process: choices at time A limit the options available at time B in regular and predictable ways. These limiting choices are, by and large, designed as mutual non-aggression pacts, based upon promises from each side to desist from antagonistic or 'disloyal' behaviour until democratic practice becomes democratic belief – and democracy becomes 'the only game in town'. Likewise, the choice to amnesty at time A may all but foreclose the option of criminal prosecution at time B, since prosecution would likely be viewed as 'disloyal' by the outgoing authoritarian regime and could even be a deal-breaker. What pacting elites bet on, however, is that getting to time B will guarantee a peaceful progression to time C in the timeline of an evolving democracy, and so on until maybe at time P or Q the option to face the past becomes viable. While this 'path dependency' does not necessarily rule out criminal trials at that future date, they, in fact, become unlikely by design, as time passes, former regime participants die, new post-authoritarian generations are inculcated in the ahistorical historiography of official discourse, and the new forward-looking national project advances. This pattern appears to match the Spanish experience. For example, the twenty-fifth anniversary of the death of Franco in November 2000, followed almost immediately by the twentieth anniversary of the 1981 coup attempt in February 2001, have inspired some renewed public retrospection by historians. To some extent there has also been renewed reflection by government and party officials, where the dictatorship and the legacy of *olvido* have been more openly discussed. However, discussion of criminal liability or moral responsibility has been conspicuously absent from this quasi-remembrance, and the era of dictatorship remains blurred in the proverbial rear-view mirror.³⁴

Meanwhile, however, the resurgence of Basque separatism – particularly of violence aimed at rejecting the legitimacy of the very regime consolidated via pacting over the past 25 years – reopens the question of 'who is us?'. It does this on a level that transcends the narrow institutional and procedural basis upon which pacting elites hoped to build loyalty to a post-Franco Spanish democracy. While it is beyond the scope of this paper to analyse the terrorist group ETA (*Euzkadi ta Azkatasuna*, or Basque Homeland and Liberty) and the various nationalist movements in the Basque country, on a general level we might ask, 'What do the Basque separatists want?'.³⁵ Article 2 of the Constitution of 1978 proclaims 'the indissoluble unity of the Spanish nation', and yet the document goes on to describe a quasi-federalist relationship between the centre and autonomous regions, including a considerable degree of self-rule along with a guarantee of minority rights in the liberal democratic tradition.³⁶ Thus, individual Basque citizens theoretically enjoy universal rights to civil and political liberties – but not to their collective psychic geography. For many nationalists, it does not matter

what regime is in power at the centre in Madrid – it is still the government in Madrid which ultimately holds power, and this they find illegitimate. Thus, in a variety of legal and illegal ways, this group contests the new social contract forged in the pacting of the mid-to-late 1970s, because it attempts to detach Spain after Franco from that which came before. They do not see themselves in this narrative, this ‘constitutive story’ of a new, albeit democratic, ‘Spanish nation’. Pacting assumes that deals can be made because the two sides are rational and that they share the same definition of rationality. Thus, the question of whose individual and/or group sense of self are left out of the new national collective self may come back to haunt a pacted democracy. This can happen no matter how procedurally sound its institutions are, how imbued the general population is in the post-authoritarian national project of democracy, and no matter how many years have passed since the transition. Again, citizenship is more than a set of rights, and regime legitimacy is more than a laundry list of institutional safeguards on those rights.

Who Decides? – The Particular via the Universal: Globalized Justice Meets Democratic Transition

Legitimacy, loyalty, authority – the basic political question of ‘who decides?’ that lies at the essence of popular sovereignty – begins at home with state-making elites and state-demanding publics. What happens, then, when those elements and the question of ‘who decides?’ becomes internationalized, and external actors under the banner of the ‘cosmopolitan consensus’ (foreign governments, international financial institutions, international tribunals, non-governmental watchdog groups and so on) insert themselves into these most domestic of processes as the moral arbiters of the transition? On the one hand, this is not nearly as new a question as it may appear. After all, historically speaking, external intervention – frequently in violation of Krasner’s international legal and Westphalian categories of sovereignty – was often associated with the strategically- and ideologically-driven projection of power of the strong over the weak.¹⁷ The United States has had a century-long foreign policy tradition of ‘exporting democracy’ (according to a definition that equated democracy with stability or anti-communism), and throughout the Cold War era, US foreign policy sanctioned intervention in a number of covert and overt ways to control the outcome of regime transitions and revolution abroad, often in defence of American corporate as well as strategic interests, with the role of the Central Intelligence Agency in the overthrow of President Salvador Allende in 1973 a prime example.¹⁸ What appears new about international intervention to promote democracy under globalization is that much of that intervening is

being done not by powerful states, but by non-state actors and international organizations which themselves enforce a set of ideological preferences for the outcome of regime transition, though by somewhat different means.

Moreover, there appears to be a qualitative shift going on, if not in the power-based logic of the intervenors, then in the strategies of the transitional regimes and the impact on the processes of democratization. The perception if not the reality of democratization in the 'age of globalization' is that the erosion of borders has expanded the locus of 'who decides' regarding a regime's legitimacy, and that being *open* to international and transnational norm enforcement is now part and parcel of the 'good governance' that has become a litmus test for full membership in international society and the receipt of its material and political benefits. The benefits include the confidence of foreign investment, access to financial assistance from the International Monetary Fund, or a seat at the table in multilateral organizations.³⁹ Transnational non-governmental organizations (NGOs) act like, and are often treated like, a new element in an expanded constituency. Their strategies of 'mobilizing shame' via media outlets and the Internet and bringing evidence of government abuse before bodies such as the United Nations Human Rights Commission are designed to expand the 'who' that gets to decide.⁴⁰ The dilemma for today's democratizers, then, is to balance the demands and normative priorities of competing transnational-international constituencies along with the needs of competing and only recently reconciled domestic groups. The dilemma is exacerbated by the fact that a delicate balance of compromise and concession – an implicit or explicit pact – often forms the core of the democratic transition itself.

At the same time, the other side of the equation is also in play. According to which (or whose) rules does this expanded 'who' get to 'decide'? Indeed, the question of jurisdiction is not only a procedural question of the autonomy of national decisions, but also a substantive question of the standards of behaviour and their moral bases. Claims for the universality of international humanitarian law are the preferred language of those who seek justice beyond their nation's borders. Even if they do have access to their home judicial system, they delegitimize it by arguing that the 'rule of law' it provides is based upon a substandard – even immoral – set of particularized principles. Teitel views law as a flexible framework for transition elites to shape according to the needs of their societies during a highly-contested moment.⁴¹ But those who appeal to universal principles reject such pragmatic and instrumental interpretations, preferring to see law as a standard measure by which to judge the quantity and quality of justice available to citizens and, by extension, the democratic credentials of the regime. It is one thing, they would argue, to deride globalization for its

homogenizing power in the realm of culture and the economy, and quite another to demand a homogenized – and universal – moral standard of human rights and justice.

Thus, a shift from the pragmatic to the moral – and from the particular to the universal – in the evaluation of pacted democracy reflects the growing influence of the ‘cosmopolitan consensus’, and is further driven by arguments that link globalization to the rise of ‘global civil society’. Such arguments claim that the retreat of the state from key areas of economic and political life – the end of the ‘embedded liberalism’ bargain of free markets in exchange for social welfare protection from the dislocations of those markets – has, over the past decade or so, loosened the social bonds between members of national societies. They have broken the near-monopoly on political identity of the nation-state and leading individuals and groups to seek their fellows, and their recourse to justice, across borders.⁴² What such arguments overlook, however, is what Keek and Sikkink’s model captures but does not emphasize. Many of these ‘issue networks’ that cross borders are fundamentally citizen-based in their constituent groups and state-directed in their strategies.

Take, for example, the well known ‘boomerang’ pattern. The network is activated first and foremost by national groups facing ‘blockage’ on the domestic level; next, that network acts on international institutions and on other national governments with the aim not of a new transnational jurisdiction, but rather to pressure the target national government to change state behaviour or policy. But there is yet another dimension. The national groups that activate the network often do so in order to challenge the very same dissolution of the social bond that empowers them transnationally, whether it be for economic/social justice due to neo-liberal ‘blockage’ or for historical justice due to democratic transition ‘blockage’. Nationally-based human rights groups, exile groups, and groups identifying themselves as victims or families of victims of a particular regime all have looked abroad for allies, but their main target may not be simply their empowerment in universal terms over the restrictions placed on their legal standing at home. Rather, they use these *universalizing* methods for a radically *particularized* purpose. That purpose is to re-engage the social bond with their fellow countrymen as well as their government and thus ‘forcing’ the society to be free.

The next part of this article (to be published later) will illustrate this phenomenon through an examination of the arrest and attempted extradition of former Chilean dictator Augusto Pinochet – the first phase of what has been commonly referred to as the Pinochet case.

NOTES

1. Ariel Dorfman, 'Increíble pero cierto', *El País* (3 August 2000), p.11. All translations from the Spanish are my own, unless otherwise indicated. See the Epilogue for a discussion of the suspension of the case in the summer of 2001.
2. The Chilean legal terms are *autor* – giving orders or directly committing the crime – and *encubridor* – having knowledge of the crime after the fact and then covering it up to protect the perpetrators. See Manuel Delano, 'La Corte de Apelaciones de Chile confirma que Pinochet será procesado', *El País* (9 March 2001), http://www.elpais.es/articulo.html?xref=20010309el_1&anchor=elpepiint&type=Tes&d_date=20010309, accessed 14 June 2001.
3. The series edited by O'Donnell, Schmitter and Whitehead on transitions from authoritarian rule, recognized as the landmark study of the mid-1980s, started from an explicit normative bias in favour of transitions to democracy, and an analytical bias emphasizing the expanded scope for agency for political elites under uncertainty. Indeed, O'Donnell and Schmitter's concluding volume begins with a discussion of these biases, and a suggestion that the ensuing text might serve as 'pieces of a map' to guide these actors as they make choices under such volatile circumstances. See Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore, MD and London: Johns Hopkins University Press, 1986), pp.3–5. Similarly, introducing their series on democratic consolidation a decade later, Diamandouros and Gunther argue in favour of focusing on the successful cases from southern Europe as a source of 'lessons' that may 'prove useful to policy-makers attempting to navigate the uncharted and unpredictable waters of democratization in their own countries'. P. Nikiforos Diamandouros and Richard Gunther, 'Preface', in Richard Gunther, P. Nikiforos Diamandouros and Hans-Jürgen Puhle (eds), *The Politics of Democratic Consolidation: Southern Europe in Comparative Perspective* (Baltimore, MD and London: Johns Hopkins University Press, 1995), p.ix. Samuel Huntington, who coined the term 'third wave', offered five sets of 'Guidelines for Democratizers' in his analysis of the processes which have brought that wave about, while Giuseppe Di Palma's analysis on the brink of the post-Cold War transformations in eastern Europe is similarly focused on the 'how-to' aspects of process as well as the 'can-do' philosophy of voluntarism. See S.P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK and London: University of Oklahoma Press, 1991), Chapter 3, pp.109–63; and G. Di Palma, *To Craft Democracy: An Essay on Democratic Transitions* (Berkeley, Los Angeles and Oxford: University of California Press, 1990).
4. Recent examples are the adoption of truth and reconciliation commission models – first in Chile, then in South Africa, Guatemala and El Salvador; the choice of pacting over trials as seen in post-communist eastern Europe; and Mexico's President Vicente Fox's public consultations with prominent Spaniards following his historic election defeating the ruling Institutional Revolutionary Party, and his promises to launch a truth commission to uncover corruption as well as human rights violations of the authoritarian period. See Reed Brody, 'Justice: The First Casualty of Truth?', *The Nation* (30 April 2001), pp.25–32; Juan Jesús Aznárez, 'Vicente Fox analiza con Felipe González la transición en México', *El País* (13 July 2000), p.8; and Tim Weiner, 'Power Fight in Mexico on Peering into the Past', *New York Times* (10 June 2001), sect. 1, p.17.
5. I recognize the apparent asymmetry between a 'cosmopolitan' consensus and a 'Washington' consensus; the justification for my claims to symmetry lie in both the connection between the individualism, that is, the 'negative liberty' of liberalism and the 'American creed', and the now-ubiquitous global spread and internalization of the free-market standards embodied in the 'Washington consensus' a decade after its official launch into the vocabulary.
6. The literature on the rise of 'global civil society' has exploded in the past decade. For representative works, see Ann-Marie Clark, Elisabeth J. Friedman and Kathryn Hochstetler, 'The Sovereign Limits of Global Civil Society: A Comparison of NGO Participation in UN World Conferences on the Environment, Human Rights and Women', *World Politics*, Vol.51, No.1 (1998), pp.1–35; Ronnie D. Lipschutz, 'Reconstructing World Politics: The Emergence of Global Civil Society', *Millennium* Vol.21 (Winter 1992), pp.389–420; Jackie Smith,

- 'Global Civil Society? Transnational Social Movement Organisations and Social Capital'. *American Behavioral Scientist*, Vol.42, No.1 (1998), pp.93–107; Paul Wapner, 'Politics Beyond the State: Environmental Activism and World Civic Politics', *World Politics*, Vol.47, No.3 (1995), pp.311–40.
7. For an excellent analytical overview of the concept itself, see Michael Ross Fowler and Julie Marie Bunck, *Law, Power and the Sovereign State: The Evolution and Application of the Concept of Sovereignty* (University Park, PA: Penn State University Press, 1995). This rediscovery has been led by scholars investigating what the international system was like before and after Westphalia, and discovering that a system of air-tight sovereign states has never quite existed. See, for example, Janice E. Thompson, *Mercenaries, Pirates and Sovereigns: Extraterritorial Violence in Early Modern Europe* (Princeton, NJ: Princeton University Press, 1994); Hendryk Spruyt, *The Sovereign State and Its Competitors* (Princeton, NJ: Princeton University Press, 1994); and John Gerard Ruggie, 'Territoriality and Beyond: Problematising Modernity in International Relations', *International Organisation*, Vol.47, No.1 (1993), pp.139–74. Other works in the constructivist or sociological mould have studied sovereignty as a norm that is the product of – and a primary shaper of – social interactions among actors in the international system. See Thomas J. Biersteker and Cynthia Weber (eds), *State Sovereignty as Social Construct*. (Cambridge: Cambridge University Press, 1996).
 8. A characteristically forceful statement of the impotence of the state in the world economy is Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (Cambridge: Cambridge University Press, 1996). Strange's argument has a great deal of affinity with those of 'global civil society', in that she eschews talk of incorporeal 'market forces' and instead identifies actual non-state actors ('econocrats') working (individually and collectively) transnationally to enforce norms across borders. Countering Strange is Linda Weiss, *The Myth of the Powerless State* (Ithaca, NY: Cornell University Press, 1998). A more recent study confirming and quantifying the degree to which states can make policy independent of 'global market norms' is Layna Mosley, 'Room to Manoeuvre: International Financial Markets and National Welfare States', *International Organisation*, Vol.54, No.4 (2000), pp.737–73. The ability of states to respond in domestically-appropriate ways to global market forces is addressed in Suzanne Berger and Ronald Dore (eds), *National Diversity and Global Capitalism* (Ithaca, NY: Cornell University Press, 1996).
 9. For a comprehensive review, see Lisa L. Martin and Beth A. Simmons, 'Theories and Empirical Studies of International Institutions', *International Organisation*, Vol.52, No.4 (1998), pp.729–57. Much of the literature addressing the 'supply' of international institutions to meet the 'demand' for governing interdependence has focused on the European Union. See, for example, Harold K. Jacobson, 'International Institutions and System Transformation', *Annual Review of Political Science*, Vol.3 (2000), pp.149–66. The most influential recent work on the targeting of international institutions by citizens is Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY and London: Cornell University Press, 1998).
 10. Immanuel Kant, 'To Perpetual Peace', in *Perpetual Peace and Other Essays* trans. Ted Humphrey (Indianapolis and Cambridge: Hackett, 1983), pp.107–43. Kant has also been invoked frequently in the ongoing debate on the 'democratic peace thesis' – that democracies are less likely to go to war with one another and hence stabilize international politics. See the classic statement in Michael Doyle, 'Kant, Liberal Legacies, and Foreign Affairs', reprinted in Michael E. Brown, Sean M. Lynn-Jones and Steven E. Miller (eds), *Debating the Democratic Peace* (Cambridge, MA: MIT Press, 1996), pp.3–57, esp. pp.21–7 on Kant.
 11. It should be noted here that the demand for 'rule of law' can be found in both 'cosmopolitan-liberal' communities, as seen in business demands for universal rules for the operation of businesses across national jurisdictions, including standards of accounting, anti-corruption measures and protection of property rights from expropriation. This parallel, again, is not meant to imply moral equivalence – given the strong critique of globalization's role exacerbating socio-economic and political inequality world-wide – but rather to note that the same rhetoric, philosophical/normative individualism, and legalism informs both communities.

12. See, for example, Gregory H. Fox and Brad R. Roth, 'Introduction: The Spread of Liberal Democracy and its Implications for International Law', in G. Fox and B. Roth (eds), *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000), pp.1–22.
13. Thomas M. Franck, 'The Emerging Right to Democratic Governance', *American Journal of International Law*, Vol.86, No.1 (1992), p.46.
14. Fernando R. Tesón, 'Changing Perceptions of Domestic Jurisdiction and Intervention', in Tom Farer (ed.), *Beyond Sovereignty: Collectively Defending Democracy in the Americas* (Baltimore, MD and London: Johns Hopkins University Press, 1996), p.34.
15. Heraldo Muñoz and Mary D'Leon, 'The Right to Democracy in the Americas', *Journal of Interamerican Studies and World Affairs*, Vol.40, No.1 (1998), p.1. On the Santiago Declaration and its decidedly mixed implementation record, see Domingo E. Acevedo and Claudio Grossman, 'The Organisation of American States and the Promotion of Democracy', in Farer, op. cit., esp. pp.137–45.
16. Kofi Annan, 'Two Concepts of Sovereignty', *The Economist* (18 September 1999), pp.49–50, from Lexis-Nexis Academic Universe, accessed 13 June 2001.
17. Robert Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990).
18. O'Donnell and Schmitter, *Tentative Conclusions*, pp.7–12.
19. Jean-Jacques Rousseau, 'On the Social Contract', in Jean-Jacques Rousseau, *The Basic Political Writings*, trans. Donald A. Cress (Indianapolis and Cambridge: Hackett, 1987), pp.139–227.
20. For a similar, if more spiritual, interpretation of the sacred bonds of political society, see Daniel J. Elazar, *Covenant and Civil Society: The Constitutional Matrix of Modern Democracy*, Vol.4 in *The Covenant Tradition in Politics* (New Brunswick: Transaction Publishers, 1997), esp. p.4.
21. Rogers M. Smith, 'Citizenship and the Politics of People-Building', *Citizenship Studies*, Vol.5, No.1 (2001), pp.73–96.
22. Although the classic definition of transitional pacts found in O'Donnell and Schmitter limits the term to 'an explicit agreement ... among a select set of actors', (p.37), this understanding has evolved to encompass a wide range of formal and informal agreements which together make up what Daniel Friedham calls an 'open-ended bargaining process' in which the new rules of the political game are specified and mutual guarantees are made. See Daniel V. Friedham, 'Bringing Society Back Into Transition Theory after 1989: Pact Making and Regime Collapse', *Eastern European Politics and Society*, Vol.7, No.3 (1993), pp.483–8.
23. R.M. Smith, op. cit., p.75.
24. See note 4 above. It seems natural that game theory has been employed to model the ongoing negotiating environment in a pacted transition and beyond. See Wendy Hunter, 'Negotiating Civil-Military Relations in Post-Authoritarian Argentina and Chile', *International Studies Quarterly*, Vol.42, No.2 (1998), pp.295–318. On the 'pacting bias' in the literature and a game-theoretical critique of pacting, see Barbara Geddes, 'What Do We Know About Democratization After Twenty Years?' *Annual Review of Political Science*, Vol.2 (1999), pp.115–44, esp. pp.120, 136–7. The literature is not monolithic; indeed, while keeping elites as their central focus, many works have emphasized the dynamic interactions among various elites and between elites and other groups. See Donald Share and Scott Mainwaring, 'Transition Through Transaction: Democratization in Brazil and Spain', in Wayne A. Selcher (ed.), *Political Liberalization in Brazil: Dynamics, Dilemmas, and Future Prospects* (Boulder, CO: Westview Press, 1986), pp.175–215. For an analysis of negotiating elites and their needs to balance constituency needs, see Jeffrey Herbst, 'Prospects for Elite-Driven Democracy in South Africa', *Political Science Quarterly*, Vol.112, No.4 (1997–98), pp.595–615, esp. p.611. On the impact of pacting on consolidation, see John Higley and Richard Gunther (eds), *Elites and Democratic Consolidation in Latin America and Southern Europe* (Cambridge: Cambridge University Press, 1992).
25. An historical antidote to this bias against popular mobilization is found in Ruth Berrins Collier, *Paths Towards Democracy: The Working Class and Elites in Western Europe and South America* (Cambridge: Cambridge University Press, 1999).

26. See Kenneth A. Oye, 'Explaining Cooperation Under Anarchy: Hypotheses and Strategies', in Kenneth A. Oye (ed.), *Cooperation Under Anarchy* (Princeton, NJ: Princeton University Press, 1986), pp.1–24, esp. pp.12–18.
27. Di Palma views pacts as a 'shortcut to habituation', whereby authoritarians do not become democrats, but they do begin to signal their loyalty to the new democracy. Over time, democratic process then habituates the society at large, while the example of former authoritarians signals that it is safe to believe in democracy's survival. See Di Palma, pp.89–90.
28. Paloma Águilar Fernández, *Memoria y olvido de la Guerra Civil española* (Madrid: Alianza Editorial, 1997), p.27.
29. Spain enjoyed precedence - its transition came first - and the devoted attention of committed scholars such as Juan Linz, which then transformed the Spanish case into a source of lessons. See note 4 above. See also Richard Gunther, 'Spain: The Very Model of the Modern Elite Settlement', in Higley and Gunther, op. cit. pp.38–80; and, more recently, Omar G. Encarnación, 'Civil Society and the Consolidation of Democracy in Spain', *Political Science Quarterly* Vol.116, No.1 (2001), pp.53–79, esp. p.55 on Spain as a 'crucial testing ground' for theories of democratic transition and consolidation due to its successful trajectory.
30. For a critique of pacting as a means of entrenching elite political and socio-economic privilege, see Frances Hagopian, "'Democracy By Undemocratic Means?'" Elites, Political Pacts and Regime Transition in Brazil', *Comparative Political Studies*, Vol.23, No.2 (1990), pp.147–70. For an analysis which views Spain's transition in a positive light on this dimension, see Omar G. Encarnación, 'Labor and Pacted Democracy: Post-Franco Spain in Comparative Perspective', *Comparative Politics*, Vol.33, No.3 (2001), pp.337–55.
31. Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), Chapter 3, pp.69–117.
32. *Ibid.*, p.56 on sovereignty; pp.54–5 on the liberalizing effects of amnesty.
33. *Ibid.*, p.53.
34. Josep Ramoneda, 'La consigna y el aniversario', *El País* (21 Nov. 2000), p.3; Santiago Carrillo, 'Un aniversario lejano', *El País* (23 Feb. 2001), p.13. On 21 November 2000, *El País* also announced its own publication of a special insert the next day of essays commemorating 25 years of monarchy, revisiting the past but still a more future-oriented spin than the death of Franco (p.24). Network Spanish television commemorated the 23-F coup attempt with special programming on the event itself and the pro-democracy march on 27 February, again, with a greater focus on how the event fitted in with Spain's trajectory towards democracy than on the past, while the cable station Canal + planned to air a program designed specifically to inform teenagers of what happened through interviews with key protagonists. See I. Gallo, 'Las cadenas de televisión recuerdan el 23-F con programas especiales: Las entrevistas y testimonios se mezclarán con sonidos e imágenes históricas', *El País* (22 Feb. 2001), p.69. These articles are found on Lexis-Nexis Academic Universe, accessed 13 June 2001. Politicians, particularly those of the opposition Socialist party (PSOE) have recently been participating in public commemorations that seek to revive the history of the civil war in controlled circumstances. See Anabel Díez, 'Reivindicación de los maquis: Zapatero y Julio Llamazares lamentan el olvido de los guerrilleros antifranquistas durante la democracia', *El País* (29 March 2001), http://www.elpais.es/articulo.html?xref=20010329elpepulti_1&anchor=elpepulti&type=tes&d=20010329, accessed 29 March 2001. Spain's government is currently controlled by the centre-right Partido Popular (PP), which has some links to former franquistas and thus is quite ambivalent about public pronouncements and acts of reconciliation regarding the Civil War. In an editorial, *El País* lamented the insistence of the PP government to use only euphemistic language to condemn the 1936 coup in a symbolic gesture by the Congress to the exile community. See 'Memoria civil del 36', *El País* (16 Sept. 1999), <http://www.elpais.es/p/d/19990916/opinion/edi1.htm>, accessed 16 Sept. 1999.
35. A chronology of ETA attacks since the end of the cease fire in late 1999 is posted on: <http://www.elpais.es/multimedia/espana/cronoa.htm>, accessed 14 June 2001.
36. Quoted in Michael T. Newton with Peter J. Donaghy, *Institutions of Modern Spain: A Political and Economic Guide* (Cambridge: Cambridge University Press, 1997), p.2. For a

- full description of Basque autonomy in comparative perspective see Chapter 7, 'Regional Government and Administration', pp.117–44.
37. Krasner distinguishes 'international legal sovereignty' (formal recognition of full status in the international system under international law) from 'Westphalian sovereignty' (based on territoriality and the exclusion of external actors in shaping domestic authority relationships), and he sees the former as a prerequisite but not a guarantee of the latter. Krasner differs from my more realist approach by claiming that weaker states will compromise their international legal sovereignty, and by extension, their Westphalian sovereignty, for their own purposes, thus making these two dimensions weapons of the weak as well as the powerful. See Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), pp.14–25.
 38. Lawrence Whitehead categorizes three variants of this kind of imposition – incorporation, invasion and intimidation – and emphasizes that not only were these methods at odds with ostensibly democratic motives, but the outcomes achieved were decidedly mixed. See Whitehead, 'The Imposition of Democracy', in Abraham Lowenthal (ed.), *Exporting Democracy: The US and Latin America. Themes and Issues* (Baltimore, MD and London: The Johns Hopkins University Press, 1991), pp.216–42. See also Tom H. Carothers, *In the Name of Democracy: US Policy toward Latin America in the Reagan Years* (Berkeley, CA: University of California Press, 1991). On US democracy 'promotion' in Chile during the Pinochet dictatorship and into the transition, see Heraldo Muñoz, 'Chile: The Limits of "Success"', in Abraham Lowenthal (ed.), *Exporting Democracy: The US and Latin America. Case Studies* (Baltimore, MD and London: Johns Hopkins University Press, 1991), pp.39–52; and Alicia Frohmann, 'Chile: External Actors and the Transition to Democracy', in Farer, op. cit., esp. pp.250–53. Updated information regarding the declassification of US government documents revealing direct and indirect involvement by the Central Intelligence Agency and other US government agencies in the 1973 coup can be found at the website of the National Security Archive at George Washington University: http://www.gwu.edu/~nsarchiv/latin_america/chile.htm. On individual US official responsibility, see Christopher Hitchens, 'The Case Against Henry Kissinger, Part Two: Crimes Against Humanity', *Harper's*, March 2000, pp.49–53 on Chile.
 39. See Joan M. Nelson and Stephanie J. Eglinton, 'The International Donor Community: Conditioned Aid and the Promotion and Defense of Democracy', in Farer, op. cit., pp.169–86.
 40. This is often accomplished through the 'boomerang pattern' described by Keck and Sikkink, whereby blockage at the domestic level leads domestic NGOs to seek redress abroad, through either international institutions or foreign NGOs that have greater resources and access to pressure national governments. See Keck and Sikkink, op. cit., Figure 1, p.13. For an analysis emphasizing the importance of domestic partners for transnational NGO effectiveness in changing state behaviour, see Susan D. Burgerman, 'Mobilising Principles: The Role of Transnational Activists in Promoting Human Rights Principles', *Human Rights Quarterly*, Vol.20, No.4 (1998), pp.905–23.
 41. Teitel, op. cit., p.9.
 42. See Richard Devetak and Richard Higgott, 'Justice Unbound? Globalization, States and the Transformation of the Social Bond', *International Affairs*, Vol.75, No.3 (1999), pp.483–98.

