

Introduction

Conceiving State Violence, Justice, and Transition in East Asia

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The collaborative research presented in this volume is about the dark side of political history in East Asian countries. It deals with the worst cases of state violence in East Asia, most of which were underresearched for different reasons. The eight cases examined in this comparative study include the Japanese military's killing of Okinawans (1945), the Indonesian counterrevolutionary massacre (1965–1968), the Phatthalung Red Drum incident in Thailand (1972–1975), the Khmer Rouge's mass killings in Cambodia (1975–1978), the Kwangju incident in Korea (1980), the Mendiola Bridge incident in the Philippines (1987), the suppression of the democratic movement in Myanmar (1988), and the Tiananmen incident in China (1989). The cases chosen here are representative in illustrating victimization of the people by military or authoritarian regimes during the Cold War. (The Okinawan case occurred during the wartime period, but narratives about it were long suppressed because of the Cold War divide.) The cases show that state violence derived from a sense of threat among the ruling elite, who believed that there was a strong conflation between state and regime security. In all cases, the modality of violence was basically exemplary and demonstrative as lessons to challengers, even if combined with an instrumental element in varying degrees. This volume does not include cases of violence targeting specific ethnic

minorities. Although such ethnic violence might be another important research topic, particularly in the multiethnic Southeast Asian context, the state violence examined in this volume targeted regime challengers in general rather than specific ethnic groups.

Since the Cold War period, most countries dealt with in this volume have not been considered globally significant in the political, economic, and cultural realms. For this reason, most cases of state violence in these countries, unlike in Eastern European and Latin American countries, have not received proper public and international attention.¹ Calling attention to a situation that has been ignored for decades, this volume intends to investigate these cases with a measure of empirical rigor. It aims to not only identify the nature of state violence but to analyze the relationship between state violence and the legitimacy of the existent regime and those coming afterward. It is also interested in detailing how individual countries have dealt with past state violence in different ways in order to arrive at a typology of sorts.

It is necessary, above all, to clarify where this study is situated in relation to the study of violence in general. First, this research focuses on *state violence* rather than on political violence in general, which has been a frequently studied subject in the social sciences. *Political violence* is a more inclusive term than *state violence*. The former encompasses all kinds of politically related violence: the political opposition's violent actions, ethnic electoral violence, violent secessionist movements, as well as state-led mass killings. State violence, as a form of political violence, refers to the more narrowly defined aggression that is led by the state in an abstract sense and actually performed by its apparatuses, such as the military, the police, and other security agencies.

The state violence discussed here involved mass killing, the magnitude of which ranged from tens of people (the Mendiola killings in the post-Marcos Philippines) to millions (the mass killings in Cambodia under the Khmer Rouge). The individual cases detail how each state possessed a monopoly on the use of force and exercised it brutally. There was no real competing political entity in relation to the use of force, even if there were different perceptions of threat or crisis, case by case, between challengers and detractors. A state, in an ideal situation, has a legitimate monopoly of the use of violence, to use Max Weber's term.² But the states and their apparatuses under discussion here, whether they had an authoritarian or military regime or some combination thereof, never

legitimately used violence from the perspective of human rights or international law or even the official legal standards of the perpetrators themselves. The state violence here differs from the violence that originates from civil war and revolution, in which Charles Tilly's notion of multiple sovereigns contending with each other may be relevant.³ In other words, the state violence examined in this volume refers to the state's utilization of its apparatus—the military, the police, and security agencies—in order to maintain the unilaterally defined order of the society in question.

Second, inasmuch as this volume is concerned with the violence perpetrated on the people the state was formed to protect, there have to be sustained efforts to observe the ramifications of past violence and ways of settling related issues. These analyses are indispensably related to the examination of political transition: that is, how the legitimacy of regimes changes over time; how resolution of violence takes place today; and, if there has been no ostensible change of regime or of the viewpoint of the past, why such a situation has persisted.

Here transitional justice seems a useful tool to examine postviolence resolution. The notion of transitional justice is widely accepted in examining approaches to applying justice to past evils. There are two different approaches to the issue of transitional justice: one focuses on *punitive* legal means of dealing with offenders, and the other stresses *reconciliatory* means of including past wrongdoers in the new society in order to obtain broader peace and stability. Transitional justice is useful in examining cases in which new rules prevail over old regimes and in which an existing regime at least intends to make a compromise in relation to its own past violence. An important question that arises here is what motivates justice, either punitive or reconciliatory, to prevail. There are also related questions. What prevents the process of settlement from beginning? What are the necessary structural requirements for the process to commence?

One may reasonably generalize that the resolution of past violence is closely intertwined with democratization and that resolution and democratization mutually reinforce each other rather than one being a precondition for the other. The Kwangju case in Korea is a model case of the mutually reinforcing relationship between democratization and the resolution of state violence. And little progress in the resolution of state violence, particularly in Myanmar and China, is related to the continued authoritarian nature of the political process in these countries. Con-

versely, however, Thailand is an example of a state where democratization has not addressed past examples of state violence. Similarly, Cambodia presents another counterintuitive example: the Hun Sen government, whose leaders are accused of having been involved in past state violence, has agreed to prosecute those responsible for past crimes.

Given their different backgrounds, the individual cases may follow different paths of settlement, whereby the state makes amends to the victims of violence. Resolution can begin with something as simple as an apology or ritualistic practices, even without truth-telling exercises and legal verdicts. It can develop into a much more targeted approach, such as reparation to the victims of violence and, where possible, either including them in mainstream society or building a monument in their honor. Or resolution can take place after truth commissions have been held or the legal accountability of those responsible for state violence has been assessed, as in the UN-sponsored tribunal in Cambodia now taking place. What should be noted is that regimes in democratic transition are more likely to admit to state-led violence and to make amends afterward. In instances where efforts toward resolution of violence have not been addressed, it is necessary to identify the major reasons why even a minimal level of state effort to obtain some recognition of past misdeeds and compromise has not been forthcoming.

In connection with the points mentioned above, this volume addresses four overarching questions.

- First, why did the state use violence against a particular group of people?
- Second, how has the violence been treated afterward by the society?
- Third, what has been the path of resolution? Or alternatively, why has the violence not yet become an item on the public agenda?
- Fourth, what is the relationship between political transition and the resolution of violence?

BRINGING THE STUDY OF STATE VIOLENCE BACK IN

Despite the brutality of the violence and the illegitimacy of the relevant nondemocratic regimes, most cases in this volume have not been seriously investigated from a comparative perspective. There are a couple of reasons for this seeming neglect. First, the Cold War situation, which sig-

nificantly reified state and national security, impeded the mood of the study of state-led violence. A few scholars, such as Barry Buzan, tried to inspire a new conceptualization of security, differentiating security along a range of various referent objects, from individual to national and international ones.⁴ These scholars have also made efforts to redress this imbalance over the past two decades. But the state has long been considered the most important referent object for security in the academic community.

The Khmer Rouge massacre and the Tiananmen incident did draw exceptional international attention. The dreadful mass executions conducted by the Khmer Rouge came to special attention in the wake of the Vietnamese invasion of Cambodia in 1978 and the Sino-Vietnamese War in 1979, in which the Soviet Union and China competed for respective spheres of influence over Indochina. The Tiananmen incident captured international attention owing in part to the mass media's widespread coverage and to the euphoria associated with the erosion of communism in Eastern Europe. Even such international attention to developments in Cambodia and China, however, was unable to induce systematic research on the ways and means of state involvement in violence and on its aftermath. That is, the dominance of state security, or national security, in the Cold War situation impeded international attention to atrocious violence led by the state.

Second, the lasting underinvestigation of state violence has been associated with the Cold War divide itself. Most cases show that the Cold War situation *justified* state violence for decades. Ideological persuasion, particularly anticommunist sentiment, rendered state violence legitimate in the name of order, at least in the eyes of perpetrators. The Indonesian army's counterrevolutionary operations, which occurred alongside the escalating Vietnam War in the mid-1960s, ruthlessly targeted so-called communists regardless of the reality of their affiliation and sympathies. The Red Drum massacre in Phatthalung in the 1970s was closely related to anticommunist operations in Thailand, while the 1980 Kwangju uprising in Korea, at its initial stage, was depicted in the state-controlled media as a riot instigated by impure elements, meaning procommunists or subversives. In these cases, the regimes were basically authoritarian, but they had external political legitimacy that derived from the Cold War divide. For ideological reasons, the prevailing us-them dichotomy tarred the victims as deserving of their miserable fate after the violence.

The Okinawan case also is true in this respect, no exception to the impact of the Cold War divide on the delay of thorough and objective research. The Japanese army's mass killing of Okinawans occurred at the final stage of the Pacific War, and the postwar democratic regime in Japan might have had a chance to conduct truth-finding work about the incident. The Okinawa incident, however, could not become a public agenda item for a long time during the Cold War. The US military administration in Japan between 1945 and 1972 and the continued US presence afterward delayed the emergence of an Okinawan identity, as Hirofumi Hayashi notes in his contribution to this volume. The security of Japan and the importance of the US-Japan alliance were also main issues for both policymakers and academics. To make matters worse, the government's revisionist interpretation of the incident came in 1983, when the Ministry of Education requested that the Okinawa incident be termed a mass suicide.⁵

However, the end of the Cold War divide two decades ago reversed this situation. The notion of security received new attention from the academic community and became omnipresent in the social sciences. Human security in particular, where the referent objects are individuals and groups of people, became an indispensable part of the research agenda. In the 1990s, civilian vulnerability—mass casualties in the Rwandan civil war and the Kosovo conflict—called special attention to human security needs. The frame of reference effectively shifted from the state to its inhabitants, who were now treated as intrinsically deserving of protection by the state and its agencies. Consequently, the state and its agencies could also be held to account if such security was not provided.

Now it is time to shed light on such state violence from a comparative perspective. The examination of the cases focused on in this volume may benefit from the changed international environment and the gradual political transitions in the countries under investigation. Stabilized security in Cambodia and democratization in Indonesia, the Philippines, and Thailand are encouraging signs in the movement to uncover the dark history of these countries. The resolution to the Kwangju incident, which coincided with democratic consolidation in Korea, provides a model for comparison. The significance of the Tiananmen incident in China lies elsewhere: that is, we need to analyze why Tiananmen has not become a public agenda item notwithstanding the rapidly changing nature of Chinese society.

IDENTIFYING VICTIMS AND PERPETRATORS

The initial question arising from an examination of state violence is: who were the victims, and who were the perpetrators? This question is not simple enough to be answered straightforwardly. It is no overstatement that all inquiries about past violence start with this question and end with it as well. The most debatable question that should be addressed in this regard is *why the state targeted the specific groups* under investigation. There might be variations among cases: some accounts, for example, stress the power-competition explanation, emphasizing the military's perception of the threat posed by students' challenge amid a power vacuum, as in the Kwangju case in Korea; some stress the cultural explanation, emphasizing the elite's anger over a shaming challenge to patrimonial governance, as in the Chinese tradition.⁶ But these accounts still do not address a key question regarding victims and perpetrators: who stood behind the weapons, and, more important, why did they use a specific form of violence against their particular victims? The latter question considers the issue of threat perception, as well as the recourses and resources available to those in power.

Violence, to use Hannah Arendt's term, is a means to multiply natural strength and to keep the power structure intact.⁷ Accordingly, there should be a certain relationship between how rulers perceive challengers and how they use violence in a given situation. If the rulers view a certain peripheral group's actions, whether demonstrations or clandestine organization-building activities, as an existential threat to state sovereignty per se, it is highly probable that they will exercise instrumental violence, as Vincent Boudreau notes in this volume. On the other hand, if the rulers regard the crisis situation as a challenge to the rules of the regime, they may either use exemplary violence or loosen the tightened control. A delicate point here is that rulers as offenders often view the challengers' situation differently from what the challengers originally intended. For instance, the Cold War divide rendered the military leaders in Korea suspicious that the demonstration in Kwangju was instigated by procommunist elements; the anticommunist ideology prevalent in the 1960s drove Indonesian military officers to undertake cruel counterinsurgency measures and to unfairly persecute several hundreds of thousands of men and women, most of whom were innocent of any crime except being members of the Indonesian Communist Party (Partai Komunis Indonesia,

PKI) or its sympathizers. It is fair to say that most cases of state violence involve a serious *perceptual gap* between the perpetrators of violence and those subjected to it, in relation to threat, order, loyalty, and governance.

The question of who were the victims of violence and who were the perpetrators becomes a very hard-pressing one, as any attempt toward resolution invariably enters into a stage of either assessing victims' and perpetrators' versions of the truth or prosecuting perpetrators. In naming victims and perpetrators, there are a number of stumbling blocks. Since the violence in these cases is state led, to name both victims and perpetrators is a "fundamentally political task."⁸ Without the approval and assistance of rulers, whether initiated by the new regime or with the cooperation of the old regime, naming victims and offenders is almost impossible. In particular, naming specific people—who ordered or endorsed violence—is a prohibitively difficult task. Even with their identification, assigning all responsibility for the calamity to a single individual is not enough.⁹ This is because institutional arrangements must have facilitated such a situation. To make the question more complicated, if the resolution adopts a moderate approach toward the perpetrators, then how a given society deals with those who may say "we were all victims"—that is, that the victims of violence include those who were forced to become evildoers at a particular juncture—is an unavoidable issue.¹⁰ The Khmer Rouge massacre in Cambodia is a good example: layers of orders and hierarchy were involved in executing the mass killing, as well as in causing deaths through starvation and disease, blurring the blade-cut line of responsibility; this was particularly true for the rank-and-file officials who were involved in the massacre but did not know about or predict the chains of atrocity and their consequences.

Counting the number of victims is also related to the settlement of past violence. This issue is problematic both in the process of calling for any form of perpetrator responsibility and in the process of applying criminal justice to perpetrators. It is probable that contentious numbers may haunt perpetrators and that discourses within a society may fall into a numbers game.¹¹ When the state considers reparation to victims, the numbers issue again becomes contentious, because of the significance of who will be entitled to reparations and who will be excluded. Unlike the issue of identifying victims and perpetrators, however, the numbers question is not a politically divisive, polarizing issue in a society in transition.

THE AFTERMATH OF VIOLENCE: THE JUSTIFIED, FEARED, AND FORGOTTEN PAST

Continued repression is a typical means of quelling any possible disturbance after the outbreak of state violence, but it is not the only means of doing so. First, the perpetrators in some cases examined here refuse to admit culpability, justifying the violence in the name of protecting integral state sovereignty. Consequently, the victims become double victims: once because of the physical and psychological wounds inflicted by the violence and again because of society's—not to mention the perpetrators'—treatment of the victims as an “enemy outside” and “enemy of the order.”¹² Those who risk association with the victims of violence are labeled subversives, raising suspicion that their behavior is also detrimental to the integrity of the state. The Thai military's repression has been described as a counterinsurgency measure, the Myanmar oppression has been justified for maintaining order within the state, and the demonstration at Tiananmen Square in China is still described as a disturbance of state order.

Because of the state's monopoly on the means of violence and its ability to determine the tone and temper of state-society relations afterward, the victims of violence do not have recourse to shelter within broader society. This dynamic alerts us to another important aspect of states that use violence against their own citizens. Such states invariably conflate state and regime security: threats perceived by the regime in power are automatically assumed to constitute threats to the state as well. This conflation is naturally interactive with strengthening regime legitimacy. More important, and within a broader context, such definitions also heavily influence the structuration of state-society relations. The regime's discourse and location of the context for the perpetration of violence simply collapse different layers and levels of society into regime-defined conceptions of proper and subversive behavior.

Second, fear, for both perpetrators and victims, leaves the postviolence situation unchanged in most instances. One explanation for this may be that just as fear of being ostracized makes victims remain silent, so fear of losing privileges and being subjected to punitive justice renders perpetrators equally resistant to settlement of past violence. Victims who did not lose their lives have often been heavily monitored, their movements restricted accordingly. Many of them have also been subjected to

lengthy periods of detention and even internal political exile, as in the case of Buru Island in Indonesia, the whole of which was designated as a prison colony. For the perpetrators, the fear is political rather than psychological or cultural.¹³ A rereading of the past may well render them liable to criminal prosecution. Consequently, it is not uncommon for perpetrators of state violence to destroy evidence that may implicate them, as shown in the cases of Thailand and Indonesia. In Indonesia, the Suharto-led regime actually imposed a ban on research and study of the period leading up to the violence against the PKI.

Finally, the emergence of regulated space maintained by the regime is another reason why past violence has not become a public agenda item. Within this regulated space, the rulers as offenders provide both victims and related groups with various incentives that may be more rewarding than remembering the violence and advocating some form of settlement. Some cases vividly illustrate the types of incentives involved. The reparation to the Okinawan victims in postwar Japan was intended, even if not successful, to create an official memory of them as loyal citizens who fought for the country, rather than as civilians who were killed by the imperial army. The donation to Buddhist monks and temples in postviolence Myanmar, which exceeded normal practices, was apparently aimed at inducing broader support from one of the country's most influential social and legitimizing groups. The rapid economic growth in reformist China not only benefited all Chinese people but also gradually marginalized critics of the regime. In other words, oppression is not the only means by which an unresolved situation is perpetuated; such regulated space also allows rulers to design many means to legitimate the violence afterward. It is difficult to predict how long such regulated space will survive, but it seems clearly to function to alienate victims from many segments of society, watering down the memories of the incident and invariably delaying its resolution.

DIVERGENT PATHS OF RESOLUTION

Most cases examined in this volume, except Korea and Cambodia, have not reached the point of resolution for the various reasons discussed above. Here it is necessary to start with an examination of the theoretical implications of the two different types of transitional justice if we are to understand the possible paths of resolution that individual postvio-

lence cases are likely to follow.¹⁴ The ongoing UN-sponsored tribunal in Cambodia stands for the initial stages of retributive justice, whereas the step-by-step resolution of the Kwangju incident, running parallel with democratization in the 1980s and the 1990s, represents an admixture of retributive justice and more restorative, reconciliatory justice.

Retributive justice, advocated mostly by legal scholars, maintains that prosecution is a precondition for other elements of resolution, such as repentance, reparation, and reconciliation. The central goals are to punish the perpetrators on the one hand and to reinstate the lost honor and human rights of the victims on the other. Standards of justice are situated within an international framework, that is, the international legal context of human rights.¹⁵ The advocates of retributive justice by and large place less emphasis on the institution as a context for the occurrence of state violence; they are also less concerned about social rehabilitation within a broader context. In the same vein, for these advocates, there is little room for forgiveness and reintegration within a more conciliatory framework.

On the other hand, advocates of restorative justice are mainly concerned with justice's transformative effect in relation to both perpetrators and the society at large. For them, resolution of the violence should be an impetus for the attitudinal and behavioral change of past offenders and for reintegrating them into a new society. Therefore, restorative justice is more closely related to forbearance and social unity than to any other forms of settlement, and for this reason, it is frequently called *reconciliation*. Reconciliation here presupposes "a condition of mutual respect among former enemies" and requires "reciprocal recognition of moral worth and dignity of others," to cite Ernesto Verdeja's normative definition.¹⁶ But reconciliation also has limitations. If the transformative effect of reconciliation is overly emphasized, then resolution of past violence may become a soft option without extensive truth-finding. No doubt, excessive concern about harmony and social consensus invites criticism from advocates of human rights, as well as victims of state violence.

There is quite an interesting parallel between the retributive-restorative dichotomy and the liberal-nonliberal distinction in such matters. The advocacy of retributive justice is akin to the liberal tradition, emphasizing protection of individual human rights and punitive measures over the violation of these rights, whereas advocacy of restorative justice prioritizes restoration of social unity rather than penalizing

measures. The retributive-restorative distinction also parallels, if not in exactly the same way, the private-public distinction. Whereas retributive justice values rights at the individual level, restorative justice essentially concerns the public nature of justice. The logic of the latter is that the wounds were inflicted in the name of public order, so that justice over the past public—meaning the old regime—is a crucial part of justice.¹⁷ In this logic, individual rights are relatively, if not absolutely, given less priority than the question of the legitimacy of the old regime.¹⁸

It is notable that just as the retributive-restorative dichotomy raises an intense theoretical debate, it brings about an equally difficult choice in the real world. In more than half of the cases around the world in the midst of the justice question, particularly in Latin America and Eastern Europe, the path of reconciliation has been taken. Ideally, retributive justice and reconciliatory measures should go hand-in-hand; they should be complementary. Probably the most idealistic approach is to begin with truth-telling and accountability for reinstating victims' political rights and saving them from the stigma of "enemy of the order," then moving to reparation, repentance, conditional amnesty, and forgiveness. In reality, however, the political elite are tempted to take the "second-best choice": social unity and reconciliation. This is so because they want to avoid social polarization in dealing with past violence.¹⁹ Even after regime transition, vestiges of the past are never totally displaced, and members of the previous regime often remain in positions of power and influence. This is especially the case if a military authoritarian regime was previously in power. The military's notion of discipline and solidarity often makes it difficult for perpetrators to be criminally prosecuted. Rank-and-file loyalties and the military's corporate image may also affect the form of resolution that is available. In fact, it is not uncommon for such regimes, or senior individuals within them, to arrange for immunity or impunity prior to regime transition.

Is there any practical need for truth-telling and its instrument, the truth commission, in the process of the resolution of past violence? The truth commission eventually aims at reconciliation even if it pursues strict punitive justice over perpetrators at the initial stage; the establishment of a truth commission presupposes—probably with the exception of the imprisonment of top commanders—such ensuing processes as offenders' repentance, victims' forgiveness, and amnesty from the succeeding regime. The success or failure of a truth commission depends on apprais-

als of its role. For instance, there are diverging views on the Truth and Reconciliation Committee (TRC) in South Africa. Advocates of human rights groups particularly have charged that the TRC watered down the legal standards of criminal justice and failed to play its expected role in restoring the victims' rights.²⁰ Furthermore, when the truth commission is considered a state-manipulated ritual and as presenting a spectacular scene of the victims' pain and suffering, it will be subject to severe public criticism. Such ritualistic public testimony may overly individualize political calamity and thus ignore the deeper structure of violence.²¹ Even if such appraisals or criticisms are not within the mainstream, the role of truth commissions, whether for postviolence resolution in a broader sense or for the healing of victims' wounds in a narrower sense, remains controversial.

The truth commission is not the only solution to past violence, but its value in regard to democratic practices should not be ignored. On the one hand, truth-telling, as Leigh Payne aptly notes, might justify violence if the offenders speak only about the crimes they wish to confess. In this case, the victims of past evils are victimized again rather than healed by such perpetrators' self-justification. On the other hand, truth-telling and truth commissions, as Payne argues, may contribute to democratization. Telling the story of the horrible experience of the victims; confessing to crimes, even if the narrative is incomplete; feeling repentance and remorse—all these actions open up some new space where a possible "contentious coexistence" may be created.²² The victims, who have been treated as the enemy outside, and the evildoers, who are now the enemy of justice, may be situated together with a new value: mutual accommodation. In this respect, Kirk Simpson notes the need for "communicative justice," through which public democratic deliberation and communication take place among all people, offenders as well as victims. Borrowing Jürgen Habermas's notion of communicative action in the public sphere, Simpson maintains that communicative justice is the core aspect of transition to peace and reconciliation.²³

In sum, dealing with past violence in East Asia (especially the unsettled cases of the Philippines, Myanmar, Thailand, Okinawa, China, and Indonesia), societies must pass through both contentious debates and hard-pressing political choices regarding the questions of retributive-versus-restorative justice and punitive-versus-reconciliatory resolution. The backdrop of this bifurcation may be relevant to the nature of state-

civil society relations at the particular juncture of the resolution of the past violence—for instance, whether or not state–civil society relations have changed since the occurrence of violence. In other words, understanding why a certain country takes a specific path—in relation to the resolution of past violence—must go hand in hand with understanding changes in state–society relations and democratization. If a country has no other way forward but to accept the international arrangement of resolution, then postviolence settlement is highly likely to begin with retributive justice. The ongoing trials in Cambodia illustrate just such an outcome.

THE RELATIONSHIP BETWEEN POLITICAL TRANSITION AND RESOLUTION

Does the resolution of state violence bring about political transition, or does political transition provide an appropriate environment for resolution? What, if any, is the cause-and-effect relationship between the two? If the relationship is not one of cause and effect, how is one relevant to or interactive with the other?

To postulate: the resolution of past violence, either punitive or reconciliatory, is an inevitable step in creating new social relations, one that may truly take place in the process of transition. The analysis of state violence and its resolution is logically associated with an understanding of political change. On the one hand, reconciliatory resolution, as well as punitive justice in some sense, will likely promote new democratic practices and end the state's illegitimate use of violence and its old practices of transgressing human rights. On the other hand, room for the resolution of past violence is more likely created when the old regime breaks down or when the existing regime concedes to allow truth-telling. In the particular case of the existing regime's concession, such regimes tend to take preemptive moves to prevent harsher retributive justice by later rulers.²⁴ For example, an authoritarian regime may pass laws that admit, even if incompletely, its misdeeds and pardon those associated with state violence prior to a transfer of power, and the succeeding regime may acquiesce to such a request.

An empirical question arises from this ongoing discussion. Why is a new regime—or a newly emerging order—more likely to make the practical choice of restorative, reconciliatory resolution rather than rigid, victim-centered retributive justice in dealing with the past? In the majority of

state-violence cases, as exemplified in Spain, Chile, El Salvador, Brazil, and Poland, restorative reconciliation has been chosen.²⁵ One answer might lie in the presumption that reconciliation will be more viable in the long run.²⁶ It may be more practical and feasible to draw a consensus for social unity holding that perpetrators are fallible human beings who should be given a chance to contribute to reconstruction.²⁷

The more convincing answer, however, lies in the fact that transition in general involves many forms of institutionalization, such as introduction of an electoral system, consolidation of the rule of law, and establishment of power-transition rules; in turn, institutionalization entails various forms of negotiation, and bargaining and compromise are at the heart of the transition.²⁸ In this context, the resolution of the past violence tends to become one of several subjects of negotiation, a situation that both victims of violence and advocates of human rights sometimes do not expect to materialize. Also, resolution tends to become a topic of the *pact* between the opposition and the state in place—whether a rising new regime or the decaying old regime. According to Guillermo O'Donnell and Philippe C. Schmitter, such a pact is desirable for democratic transition, more effective than continuous contention with a divisive agenda.²⁹ The important point is something more than what is desirable; it is an empirical question of under what conditions transition is more likely to be successful, as exemplified by the TRC in South Africa and by the May 18 special laws in Korea. As opposed to the successful cases, the Argentine case is instructive in another sense. The Raul Alfonsín administration's rigid retributive justice for the crimes of the "dirty war," which was led by the military regime of 1976 to 1980 and brought about more than nine thousand deaths, ended in failure in 1989. In this case, overly restrictive, punitive justice arrived at an impasse, ironically polarizing the society because of the vestiges of military power and failing to properly respond to mounting public expectations in a time-constrained situation.³⁰

Particularly in the cases of Indonesia, Thailand, the Philippines, Myanmar, and China, the military has remained a significant feature of the state apparatus, either dominating or sustaining order within society, while showing varying degrees of change in its role since its involvement in state violence; therefore, the form of the military's engagement in the institutionalization of political transition deserves special attention in relation to the resolution of past violence. There should be increasing legitimacy concerns within the military regarding the process of

institutionalization, and such concerns must be closely associated with changes in the apparatus's perception of the threat and of the opposition, as Alfred Stephan notes.³¹ Further, the military's readiness to shift its major focus from the domestic order to its own professionalism is a key indicator of institutionalization, allowing means toward the resolution of past violence to be deliberated.³² In addition, the resolution of state violence depends on the relative empowerment of civil society at the time of transition, either positioning past state violence for punitive justice or arriving at compromise and reconciliation through negotiation and bargaining with the main perpetrator—the military, in most unresolved cases. It seems that the success or failure of resolution depends on the proximity of justice in application to each country's unique mode of transition rather than on the form of justice per se. Consequently, it is difficult to be prescriptive with regard to what models should be adopted in the East Asian cases. The natural fear deriving from any judgment of this sort, especially when longer-term reconciliation between the state and society is desired, is that the perpetrators of violence will be pardoned during the process of resolution on the utilitarian premise of achieving the greatest good for the greatest number.

NOTES

1. For an extensive discussion of the relationship among global significance, public awareness of state violence, and the ensuing alteration of state behavior, see James Ron, "Varying Methods of State Violence," *International Organization* 51, no. 2 (1997): 275–300.

2. H. H. Gerth and C. Wright Mills, eds., *From Max Weber: Essays in Sociology* (Oxford: Oxford University Press, 1958), 78, 124.

3. Charles Tilly, *From Mobilization to Revolution* (Reading, MA: Addison-Wesley, 1978).

4. See Barry Buzan, *People, States, and Fear: The National Security Problems in International Relations* (London: Harvester Wheatsheaf, 1983).

5. For details on the Cold War situation and the Japanese government's ideological disposition, which impeded extensive research on Okinawa and other Japanese war-crime issues, see Yoshiko Nozaki, *War Memory, Nationalism and Education in Postwar Japan, 1945–2007: The Japanese History Textbook Controversy and Ienaga Saburo's Court Challenges* (London and New York: Routledge, 2008).

6. Particularly for the Chinese case, see Jeffrey Wasserstrom, *Student Protests in Twentieth-Century China* (Stanford: Stanford University Press, 1991); L. H. M.

Ling, "Rationalizations for State Violence in Chinese Politics: The Hegemony of Parental Governance," *Journal of Peace Research* 31, no. 4 (1994): 393–405.

7. Hannah Arendt, "From *On Violence*," in *Violence in War and Peace: An Anthology*, ed. Nancy Scheper-Hughes and Philippe Bourgois (Oxford: Blackwell, 2004), 239.

8. Jemma Purdey, "Problematizing the Place of Victims in *Reformasi* Indonesia: A Contested Truth about the May 1998 Violence," *Asian Survey* 42, no. 4 (2002): 621.

9. *Ibid.*, 617.

10. Katherine E. McGregor, "Confronting the Past in Contemporary Indonesia: The Anti-Communist Killings of 1965–66 and the Role of the Nahdlatul Ulama," *Critical Asian Studies* 41, no. 2 (2009): 195–224.

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12. Daniel Philpott, "Beyond Politics as Usual: Is Reconciliation Compatible with Liberalism?" in *The Politics of Past Evil: Religion, Reconciliation, and the Dilemmas of Transitional Justice*, ed. Daniel Philpott (Notre Dame: University of Notre Dame Press, 2006), 17.

13. Brandon Hamber, "Flying Flags of Fear: The Role of Fear in the Process of Political Transition," *Journal of Human Rights* 5 (2006): 127–42.

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15. Vikki Bell and Kirsten Campbell, "Out of Conflict: Peace, Change and Justice," *Social and Legal Studies* 13, no. 3 (2004): 299–301.

16. Ernesto Verdeja, *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence* (Philadelphia: Temple University Press, 2009), 3.

17. Philpott, "Beyond Politics as Usual," 29.

18. For discussion of the conditions for successful retributive justice in particular, see Ellen L. Lutz and Caitlin Reiger, "Conclusion," in *Prosecuting Heads of State*, ed. Ellen L. Lutz and Caitlin Reiger (Cambridge and New York: Cambridge University Press, 2009), 275–93.

19. Philpott, "Beyond Politics as Usual," 17–19, 37.

20. Amstutz, "Restorative Justice," 175.

21. Michael Humphrey, "From Victim to Victimhood: Truth Commissions and Trials as Rituals of Political Transition and Individual Healing," *Australian Journal of Anthropology* 13, no. 2 (2003): 171–87.

22. Leigh A. Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham: Duke University Press, 2008).

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25. Paloma Aguilar, "Justice, Politics and Memory in the Spanish Transition," in *The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. A. Barahona de Brito, C. Gonzalez Enriquez, and Paloma Aguilar (Oxford: Oxford University Press, 2001), 92–118; Lavinia Stan, "Truth Commissions in Post-Communism: The Overlooked Solution?" *Open Political Science Journal* 2 (2009): 1–13.

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28. Helga A. Welsh, "Political Transition Process in Central and Eastern Europe," *Comparative Politics* 26, no. 4 (1994): 391.

29. Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusion about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1984).

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