INTRODUCTION

When the communist world began its collapse in the late 1980s and the post–Cold War period opened, newly democratic nations, some with vibrant histories of democracy, others ruled only by tyrants, and a few enjoying the promise of new nationhood, looked to the democracies, especially the United States, for help in creating democratic institutions and the complex foundation of a citizenry of democrats so necessary to traverse the inevitable rough waters ahead. How, they asked, might we best inspire our people with the habits of democracy and establish legal institutions to propel and protect our new freedoms?

Without question, the new historical era offers the most exciting opportunity for durable peace since the end of the First World War. With that prospect in mind, the United States Institute of Peace responded in a variety of ways, among them by establishing a Rule of Law Initiative and directing all programs—grants, fellowships, in-house projects, education and training, and library and communications—to pay special attention to the integral relationship between the rule of law and international peace with justice and freedom. By creating the initiative, the Institute underscored law as a crucial component of both scholarship and practice in peacemaking and peacebuilding, based upon the following propositions:

- Although in practice imperfect, democracy is by nature peaceful: on the international plane, democracies generally do not wage war against each other.
- Democratic structures require governance under the rule of law, which includes separate and independent lawmaking and judicial branches of government and incorporates basic norms of human rights and civil rights.
- The rule *of* law—not simply rule *by* law—ensures a system governed by openness, security, and accountability such that citizens may enjoy trust in their institutions and among each other.

In designing the initiative, we were intrigued by the immediate problem of how new leaderships in former totalitarian countries would treat previous governments. People had been ruled on a daily basis by violence, terror, and division, whether for decades or a few years. Civil trust had been impossible, economic opportunity crushed, and congenial social relations hard. With democracy now in the air, there were penetrating cries for retaliation against old rulers and for revelations about the past. Amnesties were discussed as were prosecutions. Decisions about the personnel and activities of the earlier governments came to mark a critical phase of this era of democratization. The Western world watched, commented, in some instances sent experts to advise. If judgments lacked fairness and if truth was subverted by bias and propaganda, the democratic foundation would be built on sand. If prosecutions (or decisions not to prosecute) complied with due process standards and if reports protected

individual rights, then the symbols, structures, and operations of the new state would be built upon justice and the start would be strong. In short, democracy would not be safe over time without a thorough and careful application of normative rules to ensure that justice was achieved upon a foundation of the rule of law.

We believed that, while each country's experience was not only dramatic but unique, their problems were not unique, in particular with respect to the treatment of former officials. We were confident that similar issues were being struggled with across the world and that studies from the recent past would hold lessons for today. We determined to create a set of first-rate readings on basic questions of "transitional justice," demonstrating that, despite the uniqueness of each society and its historical and political context, there are unifying themes common to nations moving from despotism to democracy and lessons that each nation might bring to others.

These volumes are a major compilation of carefully selected excerpts from studies as well as primary documents on transitional justice, a subject that is itself a defining theme of the second half of the twentieth century and is likely to endure well into the new millennium as suppressed ethnic, religious, and political disputes continue to be unleashed and the struggle for democracy continues. The readings show continuity of issues across continents and time, while demonstrating remarkable complexity: readers will find passages rich in legal, moral, political, and social content and, perhaps most tellingly, deep historical context.

This project proceeded from the belief that the collection, editing, and organization of the best existing material would be an important contribution to the field, facilitating comparative analysis of issues that many countries have previously viewed as unique to their own experience. The project began with a review of over 17,000 books and articles of possible relevance to the project. With the exception of Volume III, the search was mostly limited to English-language materials. We also consulted extensively with political scientists, historians, legal experts, psychologists, theologians, human rights activists, philosophers, and specialists on various countries for ideas and references in the literature. And above all, we read, edited, and structured the volumes as our findings developed.

These volumes are limited, as the subtitle indicates, to the way that emerging *democratic* societies address the legacy of their repression of their own people. This approach has excluded consideration of non-democratic successor states (for example, the transition from the Pahlavi to Khomeini regimes in Iran, or from Somoza to the Sandinistas in Nicaragua). It has also excluded most material on the transition policies of occupation authorities (such as post–World War II Japan). Lastly, although proper handling of the transitional justice issue is integral to the process of democratization, these two issues are conceptually distinct; the present study therefore does not examine democratization per se.

Each volume stands on its own, and each reinforces the others. *Volume I: General Considerations* provides a range of views on the broad issues

entailed in transitional justice. Political, historical, legal, psychological, and moral perspectives are all included.

Volume II: Country Studies examines the handling of these nettlesome issues in twenty-one countries during the last fifty years. These case studies are arranged in chronological order: five countries that dealt with the issues of transitional justice in an immediate post–World War II context (Germany, France, Denmark, Belgium, and Italy); South Korea's democratic interlude in the 1960s (with a brief discussion of that country's subsequent return to these issues nearly three decades later); transitional justice in Southern Europe in the 1970s (Greece, Portugal, and Spain); emergence from dictatorships in the 1980s in Latin America (Argentina, Uruguay, Brazil, and Chile) and in Uganda; and, finally, selected post-communist transitions in the former Soviet bloc (Czechoslovakia, Germany, Hungary, Bulgaria, Albania, Russia, and Lithuania). Because few authors have examined the full range of transitional justice issues in any one country, most of these chapters weave together material from several sources. Often, various excerpts from the same source are interspersed throughout a country study to permit thematic organization of the material.

Volume III: Laws, Rulings, and Reports contains samples of primary documents from the transitions in twenty-eight countries. Among the more than one hundred documents included are legislative charters for "truth commissions" along with lengthy excerpts from their resulting reports, amnesty and purge laws and their evaluation by the judiciary, and detailed provisions for the rehabilitation of victims of the former regime. While some of these are official translations, most are unofficial translations that we commissioned or obtained from a variety of sources.

Except as indicated, the articles and documents reprint the original text. With each of the 224 individual selections included, we have generally adhered to the style, format, and footnote numbering of the original material. As a consequence, the style may vary from selection to selection.

Finally, it is important to point to a fact that too often is left unsaid: readers should know that while they are using these books, people in many other countries are studying them too. We hope these volumes raise the profile of scholarship on transitional justice; it is extraordinarily important for the success of democracy and a world with greater freedom.

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