TO PUNISH THE GUILTY AND PROTECT THE INNOCENT

COMPARING TRUTH REVELATION PROCEDURES

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ABSTRACT

Any country in the aftermath of transition to democracy confronts the challenge of transitional justice, that is, the task of designing a system of procedures for holding perpetrators and collaborators of the ancien régime responsible for their past activity. Two important normative goals that transitional justice shares with any system of justice are avoiding false convictions (punishing the innocent) on the one hand, and false acquittals (letting the guilty go) on the other. Different systems of transitional justice will vary in the extent to which they fulfill these normative goals. In this article I offer an approach to the study of systems of transitional justice that distinguishes between confession-based and accusation-based truth-revelation procedures (CTRs and ATRs). Game-theoretic models of plea bargaining from the law and economics literature are adapted to compare CTRs to ATRs. I evaluate their performance with respect to avoiding false conviction and false acquittal. I establish plausible conditions under which CTRs perform better than ATRs and formulate propositions. The empirical implications are illustrated with three cases from East Central Europe.

KEY WORDS ● Eastern Europe ● false conviction/false acquittal ● plea bargaining ● transitional justice ● truth revelation procedures

When we first heard the news about plans to open the files . . . we started receiving letters from deep provincial parts of Poland, in which ordinary people would be admitting that many, many years ago they had informed the communist authorities about some petty, but illegal activity of their neighbors or friends. (Grzegorz

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I thank for comments four anonymous reviewers and Charles Cameron, Steven Callander, David Epstein, Jon Elster, Masha Hedberg, Vesela Hristova, John Huber, Nahomi Ichino, Saumitra Jha, Marek Kaminski, Ashley Leeds, Wendy Perelman, Susan Pharr, Allison Post, Meg Rithmere, and Randy Stevenson. Elaine Hawley provided exceptional research assistance. Data collection was supported by NSF grant SES-03-18363, the Institute for Humane Studies, and the Jennings Randolph Fellowship of the United States Institute of Peace.
1. Introduction

A central question that confronts societies undergoing a transition from authoritarianism to democratic rule is how to deal with perpetrators and collaborators of the former repressive regime. International lawyers and policy makers have argued that societies cannot reconcile with their authoritarian past unless they properly reckon with perpetrators of human rights violations and unless they uncover the truth about atrocities committed by former autocrats and their allies. Scholars have argued that transitional justice, as exemplified, for instance, by the Nuremberg trials, facilitates democratic consolidation into stable regimes (Holmes, 1994; Snyder and Vinjamuri, 2003; Elster, 2004; Kaminski et al., 2006). Transitional justice institutions include truth commissions, lustration laws, that is, laws limiting the access to public office of politicians with an authoritarian past, lifting statutes of limitation for the prosecution of crimes committed by members of the ancien régime (for instance, past repressions against political dissidents), confiscation of the ruling party’s assets, statutes proclaiming the illegality of the ancien régime, and reprivatization or restitution of property rights. The focus of this article is on institutions that assign individual responsibility for political acts committed in the past, which I call truth revelation procedures.

In addition to denoting certain types of institutions, transitional justice (TJ) denotes an interdisciplinary field concerned with how new democracies deal with officials and collaborators of the past authoritarian regime (Kritz, 1995). Political scientists usually define a TJ system as the set of procedures for dealing with members of the ancien régime that are adopted in the aftermath of a transition to democracy (Elster, 1998, 2004; David, 2003). Work in this explanatory mode has asked why new democracies attempt to rectify wrongs committed by the ancien régime (Linz and Stepan, 1978; Schmitter and O’Donnell, 1986), which actors are responsible for implementing systems of TJ (Elster, 1998, 2004), and how systems of TJ succeed in promoting reconciliation (Gibson, 2002, 2004). Other political scientists have examined cultural, electoral, and federal constraints faced by designers of transitional justice (Sa’adah, 1998; McAdams, 2001; Kaminski et al., 2006).

Transitional justice shares with other systems of justice the dilemma of unreliable evidence: how does one identify and punish those guilty of authoritarian repression when evidence is either incomplete or possibly falsified? Outgoing regimes, when there is enough time to prepare for the loss of power, have both
the opportunity and incentive to destroy and manipulate critical documents from their secret files. Does this imply that systems of transitional justice are doomed to overlook the guilty and occasionally prosecute the innocent? In this article, I show that a procedure’s ability to protect the innocent, but punish the guilty depends critically on the kind of institutional mechanism that one adopts for pursuing transitional justice. Specifically, I examine the effect of introducing incentives in transitional justice designs on the errors of false acquittal (i.e. failing to name all those who are guilty of committing atrocities or collaboration with the ancien régime) and false conviction (i.e. false condemnation of those innocent of such collaboration on the basis of doctored evidence). I find that the possibility of designing an institution that performs best in terms of avoiding false convictions and false acquittals critically depends on beliefs about the destruction and falsification of evidence of past collaboration with the ancien régime.

While the dilemma of unreliable evidence is one of many issues addressed by scholars of transitional justice along with retroactivity, reconciliation and democratic stability, it is a dilemma that can be addressed with the tools of institutional design. This article does not pretend to solve the biggest dilemma of transitional justice. I agree with scholars of normative TJ that there are no compelling solutions to dilemmas of retroactivity or how to balance justice with reconciliation. However, I show in this article that in the case of transitional justice institutions that assign individual responsibility – that is, in truth-revelation procedures – the problem of reducing false convictions and false acquittals is fixable. This article seeks to advance a theory of institutional design and produce a set of empirical implications about how well specific TJ institutions perform with respect to false acquittals and false convictions.

In my article, I develop the distinction between confession-based (CTR) and accusation-based (ATR) truth-revelation procedures. Next, I present two formal models to represent CTR and ATR procedures. This framework can be used to compare the risks of false acquittal and false conviction associated with applying these procedures to different transitional environments. The section concludes with hypotheses about the performance of the two types of procedures given certain background conditions. The next section translates the propositions into policy recommendations for three cases: Poland, Hungary and the Czech Republic. The final section concludes.

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2. There are two main reasons for which members of the authoritarian apparatus may have falsified evidence of collaboration. Officers were typically rewarded in proportion to the number of recruited informers; after failing to recruit an informer they were required to submit a report analyzing the causes of a candidate’s refusal. This was a cumbersome workload and could upset an officer’s promotion. It is not surprising that prior to performance audits, the number of persons registered as new collaborators would increase. Furthermore, tricking dissidents into signing a document of consent to collaboration had excellent blackmail potential, as later, secret police officers would threaten the dissident with releasing the evidence of collaboration to key people in the opposition movement. This is how the officers would exert pressure on the tricked dissident to become an informant.
2. Types of Truth-revelation Procedures

The existing literature on transitional justice has maintained a firm distinction between truth commissions, predominant in Latin America and Africa (Kritz, 1995; Hayner, 2001; Rotberg and Thompson, 2000) and lustration, occurring exclusively in post-communist Europe (Holmes, 1994; Huyse, 1995; Welsh, 1996). Such a distinction, however, masks important ways in which some lustration laws and truth commissions are more similar to each other than to other procedures grouped under the same labels. I propose to reclassify such procedures into two broad categories according to whether they are accusation-based (ATR) or confession-based (CTR) truth-revelation procedures. The distinction between the two categories lies in that CTRs give the targets a chance to self-report before any charges are pressed by the prosecutor while ATRs make specific accusations.

This offer to a target of making the first move is of critical importance. To induce confession from the guilty, the target is offered in exchange partial amnesty (a slap on the wrist) instead of full accountability (a knockout blow).

Obviously, there are important differences between truth commissions and lustration laws, even when they are both confession-based or both accusation-based. From the point of view of errors of false acquittal and false conviction, however, which is the focus of this article, these differences are less important than the similarities. I will begin our discussion with accusation-based procedures, which are more familiar to students of systems of justice.

2.1 ATRs

*Accusation-based truth-revelation procedures* in TJ systems resemble traditional prosecution methods in other systems of justice, because they start with a prosecutor’s search for evidence. There are many examples of ATRs among lustration laws (Czech Republic, Bulgaria, and Hungary). Since lustration refers to limiting the access to public office of politicians with an authoritarian past, ATR lustration laws rely on evidence of collaboration with the ancien régime from archival resources. When the prosecutor finds evidence of such collaboration, the lustration agency issues a sanction. Lustration does not necessarily impose criminal punishment on proven collaborators, but it may seriously undermine their professional careers by, for instance, releasing to the public compromising information on how they spied on their fellow citizens.

There are also many examples of ATRs among truth commissions, especially in Latin America. Truth commissions are temporary bodies of inquiry that are appointed to document the criminal activity of the ancien régime. Truth commissions collect and record testimonies from victims and perpetrators. When commissions find evidence of human rights violations, they issue a public report, which frequently names specific perpetrators. In general,
ATR truth-revelation procedures can be described by three parameters: all persons in category $X$ are screened for committing action $y$ in the past and if the screening procedure finds a person in $X$ responsible for engaging in $y$, he or she faces a sanction $z$. The range of the first parameter, set $X$, is usually defined by a selection of currently held political offices or social positions. This can include MPs, senators, teachers, doctors, or even priests. The second parameter, $y$, describes the type of collaboration that constitutes the subject of screening. Types of collaboration can range from membership in the authoritarian party, to leadership in that party, to working as an informer of the authoritarian security apparatus or working as a professional undercover agent of the secret political police. The third parameter, $z$, describes the sanction handed down to targets who have been found responsible for the targeted activity. For perpetrators of human rights that have been identified by a truth commission this sanction may be a criminal sentence. For politicians undergoing lustration the sanction is usually milder: a ban on holding public office or, simply, the revelation of the target’s past activity to the public.

2.2 CTRs

Confession-based truth-revelation procedures are less familiar to students of criminal justice. However, they resemble somewhat the institution of plea bargaining, because they offer perpetrators or collaborators a reward for cooperation, that is, the opportunity to continue his or her political activity. In truth commissions, it is a promise of immunity from criminal charges or civil liability. Since the readers are less familiar with CTRs, I will present an example in which the procedure has been used. The example illustrates the probabilistic structure of rewards and sanctions common to all CTR procedures. It shows how they contribute to identifying the guilty without implicating the innocent.

In Poland, the 1998 lustration law requires that candidates for public office declare in advance of the elections whether or not they had worked for or consciously collaborated with communist secret services. If the candidate declares collaboration, he is not banned from holding any positions. However, a governmental bulletin, Monitor Polski, publishes the declaration, so that voters or the appropriate nominating agency can withdraw their support for the candidate if they conclude that his past constitutes an impediment to holding the office in question. Statements denying collaboration are transferred to a state prosecutor, who uses the archives of the former secret police to assess the accuracy of the declaration. If the prosecutor finds evidence that the declaration is false, the politician is accused of a lustration lie and tried before the Lustration Court (Dziennik Ustaw, 2002).

The procedure resembles the operation of plea bargaining in American criminal courts, which usually involves a simple confession mechanism. In his initial step, the defendant pleads whether he is guilty to the prosecutor’s charge. The
trial begins only when the defendant pleads not guilty. Entering the guilty plea usually reduces the sentence.

To understand how CTR lustration works, consider the case of Andrzej Olechowski, who was a runner-up in the 2000 presidential race. Olechowski had represented the communist regime during the Roundtable Talks in Poland in 1989. Trained in economics and diplomacy, he had never been a member of the communist party. He served as a finance minister in one of the first cabinets after Poland’s transition to democracy and, later, as the minister of foreign affairs. He was considered the most serious rival of the incumbent ex-communist president, Aleksander Kwasniewski. Among the 17 or so presidential candidates, Olechowski was the only one to admit that he had conscientiously worked as a secret informer of the Polish secret political police. He acknowledged that he had been recruited at the UN headquarters in Geneva and had worked for their economic division from 1972 to the mid-1980s. Olechowski maintained that he was unaware of the fact that not only the economic intelligence division of the former regime, but also the counterintelligence unit, registered him as an informer. The irony of Olechowski’s case, however, turned out to be that the only evidence of this collaboration was his name in the register of informers. All data on the precise nature of Olechowski’s collaboration had been provided by Olechowski himself!

Had Olechowski known that his file no longer existed, he, undoubtedly, would have remained silent about his shadowy career as a secret police informer. Having one’s name in the secret police register was not nearly enough to accuse a politician of being a lustration liar. But lacking information about the status or contents of his file, he obviously preferred to play it safe. After all, the stakes were extremely high. A candidate who failed to report collaboration would not only have to withdraw from the electoral competition but would be banned from holding any public post for up to 10 years. In addition, a note reporting his lie would be published in the governmental bulletin. However, despite losing the 2000 presidential race, Olechowski became one of the leaders of the Citizens’ Platform, which won 56 out of 460 seats in the 2001–5 Polish parliament. Within a year of his embarrassing declaration, the voters were willing to forgive him.

Olechowski’s case demonstrates that when lustration laws exploit former collaborators’ ignorance about the existence of evidence of their past activity, former collaborators for whom evidence has been destroyed may prefer to reveal their past instead of risking a harsh penalty associated with a stigma of a lustration liar.

Lawmakers in other ex-authoritarian European and African countries have been creatively and successfully employing confession-based measures. A mechanism similar to the Polish one was introduced in the Romanian Lustration

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3. The Roundtable Talks, held between February and April 1989, were the negotiations between the communist government and the pro-democratic opposition concerning the transition to democracy.

CTRs have also been adopted in the form of truth commissions following transitions from authoritarianism and civil wars in Africa. The Amnesty Committee of the South African Truth and Reconciliation Commission is entitled by section 20(7) of the National Unity and Reconciliation Act to grant amnesty to a perpetrator of an act associated with a political objective and committed before December 1993 provided that he gives a detailed testimony on the character of his activity. Amnesty granted, the perpetrator becomes immune from criminal and civil liability for that act.4 A gacaca (grass-roots) court procedure adopted in Rwanda offers a significant sentence reduction to those responsible for the 1994 genocide who confess their crimes.5

Below, I formally explore conditions under which CTRs will induce all former collaborators to declare collaboration, but at the same time, prevent the innocent from submitting false declarations. I establish conditions under which politicians can be induced to truthfully reveal the extent of their collaboration with the ancien régime.

It is also interesting to compare ATRs and CTRs with two extreme policies that are sometimes implemented to deal with the past. The first is the strategy of ‘universal purge’, which refers to treating everyone as a collaborator and denying them office merely because they held that office prior to the transition. This is an extreme policy, but elements of it have been employed in the most recent transitions in East Central Europe. Both in Poland and in Czechoslovakia the entire security service was dismissed in the aftermath of transition from communism. In Poland, security officers were allowed to reapply for their jobs on an individual basis, but in Czechoslovakia, even this option was prohibited. The polar opposite approach is to allow everyone to retain their positions or, in other words, ‘total forgiveness’. This strategy was adopted, for instance, in Spain after the 1974 transition from the authoritarianism of General Franco. However, the operation of these two extreme policies is fairly straightforward and does not rely on evidence or institutions for processing evidence. Hence, I do not propose formal models representing the ‘total forgiveness’ and ‘universal purge’ policies, although I do return to them in the comparison of types of truth revelation procedures with respect to avoiding false acquittal and false conviction.

4. Quoted from the National Unity and Reconciliation Act after Gibson (2002). The South African Commission is so far the only one with powers to grant individual amnesty (Hayner, 2001).

5. In return for confession, those accomplices to intentional homicides or serious assaults that led to death can have their sentences reduced so that they are immediately released. Defendants failing to confess are convicted and sentenced to at least 25 years of imprisonment (Amnesty International, 2002).
3. Modeling Transitional Justice

Comparing accusation-based (ATR) and confession-based (CTR) truth-revelation procedures can be performed with the help of simple game-theoretic modeling. The relevant aspects of such a comparison are the likelihoods that each institution (a) reliably identifies actual perpetrators and (b) avoids bringing innocents to trial. I will show that if it is sufficiently likely that evidence against actual perpetrators survived versus that evidence against innocents has been manufactured (i.e. destroying evidence isn’t as extensive as fabricating evidence), CTRs provide strong incentives for actual collaborators to confess and innocents to maintain their innocence. That is, in formal terms, the guilty and innocent choose in equilibrium different strategies. The intuition for this is straightforward: if those who are guilty have good reason to believe that the evidence against them survives, while those who are innocent have little reason to fear that false evidence has been manufactured against them, the guilty will choose the slap on the wrist associated with confessing, while the innocent will have little reason to falsely confess to being collaborators. The comparison of CTRs and ATRs with regard to levels of false acquittal and false conviction also includes two extreme transitional justice policies: the system of universal purge and the system of total forgiveness. Results indicate that when the levels of destroyed and falsified evidence are low, CTR will perform better than ATR and total forgiveness in terms of false acquittal and will outperform universal purge and perform not worse than ATRs in terms of false conviction. I adapt models from the existing literature in Law and Economics to represent the procedural mechanisms of CTR and ATR institutions. The analysis of these models allows us to formulate empirical implications about the effects of both systems on reducing false conviction and false acquittal.

3.1 Existing Models of Self-reporting Behavior

While game theorists have not tried to model transitional justice, economists have successfully used formal methods to model plea bargaining in a way that can be adapted to TJ (Landes, 1971; Grossman and Katz, 1983; Reinganum, 1988; Daughety and Reinganum, 1993; Kaplow and Shavell, 1994). It seems that there is a consensus in the Law and Economics literature that systems allowing for plea bargaining perform better than systems that do not. The models I propose here build on these contributions, especially on Grossman and Katz (1983), who investigate the effect of plea bargaining on false convictions and show that the institution of plea bargaining provides a self-selection mechanism for guilty perpetrators. Grossman and Katz demonstrate that for certain parameter values, only those who are actually guilty plead, whereas the innocent engage in trial. This separating effect is also easier to achieve when the prosecutor decides not only the penalty for guilty plea, but
also has some discretion over the trial penalty.\(^6\) The optimal plea bargain proposal made by the prosecutor, depending on the proportion of innocents and the proportion of risk-averse defendants, may involve more lenient treatment of guilty defendants as well as guilty pleas from risk-averse innocents.\(^7\) However, even in the case where large groups of defendants vary in risk aversion and the optimal plea bargain induces only a small fraction of the guilty to plead, this outcome is better than the outcome when there is no plea bargaining.

Similarly to Grossman and Katz (1983), I distinguish between guilty and innocent targets and use asymmetric information to model that CTRs can separate innocent persons from guilty perpetrators. In the TJ interpretation, a desirable equilibrium would have only former collaborators declaring collaboration, while the innocents would refrain from doing so. The most important difference between my model of CTRs and Grossman and Katz is that theirs is a screening model, whereas mine is a signaling model. In a screening model, the uninformed party moves first and the informed party moves second. In a signaling model, the informed party moves first and the uninformed party moves second. Both screening and signaling models can result in equilibria that separate types or pool types, but the game forms (information structure and timing) are different. The consequences of CTRs are similar: the punishment for being an informer of the authoritarian secret police is more lenient than an indefinite ban on running for office, but when the CTR mechanism works properly, all those guilty of past collaboration are sanctioned, thus false acquittal is avoided.

In order to compare CTRs with ATRs, I consider two models with incomplete information. The ATR model is a decision problem in which a strategic prosecutor observes the evidence, but makes the first move not knowing if he faces an ex-collaborator or innocent politician. The CTR model is a signaling game in which a politician makes the first move that is followed by a move of the public (referred to as voters). In the latter case, the politician can choose between declaring collaboration which secures a certain, though less preferred outcome (running in elections as a former collaborator) and the expected value of pretending to be innocent, which can result in his least preferred outcome (being exposed as a collaborator and being banned from running for office). He can also signal his identity to the public. In the ATR model, the strategic prosecutor chooses an action after having discovered whether evidence of collaboration with the past regime exists. Intuitively, one would expect that a

\(^6\) The findings reported earlier assumed that the guilty and innocent are equally risk averse. If we relax this assumption, the separating equilibrium may collapse as highly risk-averse innocents become indistinguishable to the prosecutor from the guilty, but more risk-loving defendants.

\(^7\) Although the possibility of an innocent defendant pleading guilty seems counter-intuitive, it is not uncommon that under certain institutional designs, the innocent chooses settlement over trial. CTRs preserve the incentive structure of plea bargains. One cannot exclude the possibility that the innocent may declare collaboration or testify, though this should occur rarely.
combination of more information at the outset with a first mover advantage for the prosecutor should favor ATRs over CTRs. The following sections demonstrate, however, that in the TJ setting, procedures with information withheld from everyone may be better at avoiding false acquittals and false convictions than procedures with information released to a prosecutor. Before I proceed, two notes of caution are in place. First, it is important to note that the CTR signaling model is not a model of elections. In such models, at least one politician has to be elected. Here, this is not the case. Second, the terminology I have employed in explaining the model is specific to lustration laws. The formalism, however, is equally adequate as a representation of the work of truth commissions. Instead of politicians who are ex-collaborators and their files one would speak of human rights violators’ and victims, testimonies, respectively.

3.2 The ATR Model

The State Prosecutor, $S$, decides whether or not to go to trial. Nature determines the type of the target of lustration (the politician) and whether good quality evidence against him exists or not. With probability $\delta \in (0,1)$ the politician has type I and with probability $1-\delta$ he has type C. $\delta$ can be interpreted as the commonly known proportion of innocent politicians, whereas $1-\delta$ can be interpreted as the proportion of ex-collaborators. The politician’s type is unknown to the prosecutor. Simultaneously with determining the politician’s type, Nature determines whether evidence of his past collaboration exists or not. Evidence against the innocent politician was fabricated with probability $p \in (0,1)$. With probability $q \in (0,1)$ evidence against the politician who is guilty of collaboration survived the transition. $S$ observes whether evidence of collaboration exists or not and chooses one of two actions: Trial and $\sim$ Trial (no trial). Formally, $S$’s strategy is a pair $(a_1, a_2) \in \{\text{Trial}, \sim\text{Trial}\} \times \{\text{Trial}, \sim\text{Trial}\}$, where $a_1$ is the action chosen if $S$ does not observe evidence of collaboration and $a_2$ is the action chosen if $S$ does observe evidence of collaboration.

I assume that $p < q$. The rationale for this assumption is that it is extremely unlikely that the amount of false evidence that was fabricated is greater than the amount of actual evidence that survived the transition. While evidence destruction could continue during the transition, evidence falsification is not possible once the transition has taken place. The decision problem is presented graphically in Figure 1.

The payoffs are interpreted as follows. $S$ cares about punishing the guilty and shielding the innocent from false accusations. Hence, he gets a payoff of $s > 0$, for sanctioning an ex-collaborator and $-s$ for failing to issue the sanction. If the prosecutor puts on trial someone innocent of collaboration, he suffers a payoff of $-v$, whereas if he fails to sanction an innocent, he gets $v > 0$. How are these

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8. The values of $p$, $q$ and $\delta$ are common knowledge both here and in the CTR model.
payoffs realized if the State Prosecutor does not learn the type of politician in the end of the game? The payoffs are realized in the long term: failure to screen out a politician who is guilty of past collaboration contributes to corruption of the office and failure to deliver high-quality public service. When his collaboration with the previous regime remains secret, the public official is vulnerable to blackmail by those who have access to such information and can reveal it to the public. Since there is an implicit electoral cost or loss of popularity associated with the official’s collaboration being exposed, elected officials may be tempted to avoid such cost by corrupt means. Thus, even though immediately, the State Prosecutor does not cash in the payoff of $v$ from allowing an innocent politician into office, or the payoff $-s$ from failing to screen out the guilty, these payoffs are realized over time as the corruptible or honest politicians get elected into office.

The following proposition summarizes the solution to $S$’s optimization problem:

**Proposition 1.** The condition for

\[ \frac{1 - q}{1 - p} \geq \frac{v}{s} \frac{\delta}{(1 - \delta)} \]

**Note.** In ATR the State Prosecutor ($S$) observes the evidence, but not guilt or innocence of the Politician, $P$, and decides whether or not to go to trial. ‘Files’ and ‘$\sim$ files’ are moves of nature, $\delta$ represents proportion of innocents among politicians, $p$ represents the probability that files exists if $P = I$, $q$ is the probability that files exists if $P = C$; $s$ and $v$ represent the costs of committing false acquittal and false conviction errors, respectively.
ii) \( (\sim TT) \) to be an equilibrium is \( \frac{1 - q}{1 - p} < \frac{q}{s(1 - \delta)} \leq \frac{q}{p} \)

iii) \( (\sim T \sim T) \) to be an equilibrium is \( \frac{q}{p} \leq \frac{q}{s(1 - \delta)} \)

Proposition 1 says that if the importance of false conviction does not significantly dominate the importance of false acquittal errors and/or there are not significantly more innocents than collaborators, \( S \)'s optimal strategy is either to always initiate trial \((T, T)\), or to initiate trial only when the quality of evidence is high \((\sim T, T)\). \((T, T)\) is the optimal strategy if the proportion of destroyed evidence is high relative to the proportion of fabricated evidence, whereas \((\sim T, T)\) if the optimal strategy is the proportion of destroyed evidence is low relative to the proportion of fabricated evidence.\(^9\) If considerable evidence against the guilty is missing or much of it was fabricated, those who are guilty of collaboration with the former secret political police \((C \) types) look similar to the innocent \((I \) types) and the State Prosecutor cannot extract much information from the evidence he observes. The two conditions named in this proposition are likewise plausible. If there is a need for a transitional justice system at all, collaborators must be commonplace relative to innocents. Hence it is plausible that \( \frac{\delta}{1 - \delta} < 1 \). Similarly, one can argue that prosecutors typically care more about false acquittals, hence \( \frac{q}{s} < 1 \). Since by assumption, \( q > p \), \( \frac{q}{p} \geq \frac{q}{s(1 - \delta)} \) is easily satisfied.

The ATR model may seem to be an oversimplified account of the truth-revelation procedure resembling traditional court procedures. Indeed, I have not included all the details of accusation-based procedures, but focused instead on the most important feature that separates these procedures from confession-based truth revelation, namely whether or not the target of the truth revelation procedure has the first move. The simple representation can be seen as both a limitation and an advantage. It is limited by the fact that there is certainly more going on in accusation-based procedures. The State Prosecutor may make assessments about the reliability of evidence; he may research the target’s past; perhaps he may even offer the target the equivalent of a plea bargain, promising to drop the lustration case if the target resigns from office quietly. These considerations are valid, but distract from the main purpose of the model which is to provide a baseline model for the more complex and less known confession-based truth-revelation procedure. Although the results from the decision model are very intuitive, this step is important and cannot be omitted in comparative institutional analysis. In order to draw inferences about CTR versus ATR systems of justice one should model the difference between CTRs and ATRs within the same framework.

\(^9\) These results are robust to including an additional parameter \( c \), \( 0 < c < 1 \), that represents the difficulty associated with sanctioning a target for whom the quality of evidence is low (i.e. files do not exist).
3.3 The CTR Model

The first distinguishing feature of the CTR model is that the target of the transitional justice procedure is granted a first move. Thus, the formal representation of CTRs is no longer a decision problem, but a strategic signaling game. In its canonical form, a signaling model has two players: a sender and a receiver. The sender knows his own type, but the receiver does not know the sender’s type. The sender chooses a message \( m, m \in M \). The receiver chooses an action \( a, a \in A \), based on the observed message. Perfect Bayesian Equilibria in signaling games have two parts: the strategy profile and the \( a \) posteriori beliefs of the receiver about the type of sender he or she is facing. In one class of such equilibria, separating equilibria, senders of different types behave differently. Thus, the sender’s message reveals her type to the receiver. In this process, the receiver gets to update his \( a \) priori beliefs to \( a \) posteriori beliefs. In another class of equilibria, known as pooling equilibria, senders of different types choose the same action. Thus, their messages convey no information to the receiver to update on and \( a \) posteriori beliefs remain the same as \( a \) priori beliefs. In the CTR game, the sender is the Politician \( (P) \) and Voters \( (V) \) play the role of the receiver. The role of the Voters in this model is to replace the State Prosecutor in sanctioning collaboration. In stage \( t_1 \), Nature determines \( P \)’s type, which can be innocent \( (I) \) or guilty of collaboration \( (C) \). Types \( I \) and \( C \) occur with probability \( \delta \) and \( 1-\delta \), respectively. In stage \( t_2 \), \( P \) chooses an action. He can declare \( (D) \), or deny \( (N) \) collaboration. If \( P \) chooses \( D \), then in stage \( t_3 \), \( V \) chooses whether to elect him \( (1) \) or not \( (−1) \). After this move, the game ends. If \( P \) chooses \( N \), then in \( t_3 \), Nature reveals whether evidence against him exists or not.\(^{10}\) Evidence against the types \( I \) and \( C \) exists with probability \( p \) and \( q \) respectively, with \( p < q \). If evidence does not exist, in stage \( t_4 \), an election takes place in which \( V \) decides whether to vote for \( P \) or not. After \( V \)’s action, the game ends. The formal definition of the game and payoff functions are provided in the mathematical appendix. The game tree representing the interaction between \( V \) and \( P \) is presented in Figure 2. The payoffs are summarized in Table 1.

The Politician derives utility from winning office, avoiding a declaration of collaboration and not having evidence against him exposed, while the Voters gain utility from electing a type \( I \) Politician and sanctioning (i.e. not electing) a type \( C \) one. More specifically, \( P \) gets \( w \) if he is elected into office (the Voters choose action ‘1’), which is his most preferred outcome. If he had to declare collaboration before being elected, he pays the higher cost of \( h \) (if he is Innocent) or the lower cost of \( l \) (if he is an ex-Collaborator) and his final payoffs are \( w - h \) and \( w - l \), respectively. If evidence exists (which \( P \) does not know), he would

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\(^{10}\) In Figure 1, I present the game according to standard game-theoretic practice and include all moves of Nature in \( t_1 \). I make an exception from this rule in the narrative description of the strategic exchange for presentational clarity.
prefer to expose it himself (thus \( w > h > l \)). If the Politician is not elected (Voters choose action ‘−1’) he gets 0, but in addition to that, if he earlier declared collaboration he gets \(-h\) and \(-l\), if he is type I or type C, respectively. The worst outcome \((-w)\) is when evidence is exposed, after the Politician declared non-collaboration; in this case he is announced a ‘lustration liar’ and is banned from running for office for a certain period. The Voters get \(v\) if they elect the Innocent candidate and \(-v\) if they do not elect him or if the Innocent is announced a lustration liar. The Voters get \(s\) if they do not elect (sanction) the ex-Collaborator or if the ex-Collaborator is announced a lustration liar. If Voters elect the ex-Collaborator they get \(-s\). I do not assume whether Voters are more concerned with false acquittal than false conviction errors, that is, whether \(v > s\) or \(s > v\).

Note the important links between the ATR and the CTR models. In the CTR, the State Prosecutor is replaced with the Voters, who have exactly the same preferences as the prosecutor (they want to sanction the guilty of collaboration and protect the innocent), but different access to information (the Voters observe the Politician’s declaration, but not whether or not evidence exists).

Before discussing the results, I briefly motivate the decision to model costs to \(P\) associated with declaring, \(D\). These costs are reputational. The label of an
ex-collaborator of the former authoritarian regime draws associations with opportunistic behavior, questionable loyalty, and weak morals. It is plausible to assume that the Innocent type pays a higher cost \(h\) for declaring collaboration than the ex-Collaborator \(l\). Ex-Collaborators are more likely to be associated with ex-communist political parties whose members, even if they collaborated with the secret police, had done so for ideological reasons and were not being disloyal to their political allies. In contrast, most Innocents gained political experience as members of the underground opposition. For them admitting to having been an informant virtually destroys their pre-lustration reputation. It also seems natural that there be psychological costs associated with lying as opposed to admitting the truth. Declaring collaboration is more difficult for an innocent than for a guilty politician. One could argue that revealing the truth, however painful, relieves the ex-Collaborator partially of a moral burden. No such relief awaits the innocent falsely declaring collaboration.\(^{11}\)

Note that the CTR model appears to be much more complex than the baseline ATR. It shares, however, with the ATR model the temporarily removed realization of payoffs to the public. Voters, similarly to the State Prosecutor, do not know immediately whether or not they have enabled an ex-Collaborator or Innocent to run for office. In addition to the argument about corruptibility and long-term effects presented in the previous section, one may consider the following

\(^{11}\) However, since a potential criticism of this model is that it is the differentiation in costs among different types of players that is driving the separating equilibrium, I discuss later what becomes of the results after allowing \(l = h\).
argument: eventually, once the archives of the secret political police get organized, all evidence will be uncovered and the public (Voters or State Prosecutor) will reap the rewards from accepting an innocent politician or screening out one that is guilty of collaboration.

Intuitively, an ideal CTR truth-revelation procedure would be represented by a separating equilibrium in which those guilty of collaboration declare collaboration and are sanctioned with non-election, whereas the innocent do not declare collaboration and are elected. Less desirable are the two pooling equilibria, in which politicians pool on declaring (DD) or on non-declaring (NN):12

PROPOSITION 2. (summary)

1. The separating equilibrium in which ex-collaborators declare collaboration, innocents deny and the voters reward the innocent with re-election and punish the ex-collaborators by not voting for them occurs when the proportion of fabricated files is sufficiently low \( (p \leq \frac{w + h}{2w}) \) and the proportion of authentic evidence that survived the transition from authoritarianism is sufficiently high \( (q \geq \frac{w + l}{2w}) \). This equilibrium characterizing an ideal CTR institution becomes unique for very low levels of fabricated evidence.13

PROPOSITION 3. (summary)

1. For small proportions of fabricated evidence \( (p \leq \frac{w + h}{2w}) \) but large portions of destroyed documents \( (q \leq \frac{w + l}{2w}) \), the pooling equilibria in which neither type declares collaboration occur when there are not many more innocents than collaborators \( (\delta < \frac{s + v}{v}) \);

2. The pooling equilibria in which both types declare collaboration occur when a lot of evidence was fabricated \( (p \geq \frac{h}{w}) \) and small amounts were destroyed \( (q \geq \frac{l}{w}) \).

The pooling equilibria summarized above do not characterize the strategies of the voters or their beliefs. This is the case because for most parameter values with pooling equilibria, there are multiple such equilibria. Their description has been relegated to the mathematical Appendix where propositions 2 and 3 present the results formally.14

12. The profile (DD, 1-1) should be read as \( P \)'s strategy: Declare if Innocent (first D) and Declare if Collaborator (second D), \( V \)'s strategy: 1 (vote) if observed Declare and \(-1 \) (do not vote) if observed Deny.

13. For \( p < \frac{h}{w} \) if there are many collaborators \( (\delta < \frac{s + v}{v}) \) and for \( p < \frac{h}{w} \) if there are not many collaborators \( (\delta > \frac{s + v}{v}) \).

14. The mathematical Appendix can be found on the author’s website at http://www.ruf.rice.edu/~nalepa.
3.4 False Acquittal and False Conviction under Different Institutional Designs

After determining the equilibrium strategies of the State Prosecutor (in the ATR model) and the Voters and Politician (in the CTR model), I am prepared to conduct comparative institutional analysis. I am interested in the levels of false acquittal and false conviction that characterize outcomes associated with equilibria in CTR and ATR institutions as well as the two other policies introduced in section 2: ‘total forgiveness’ and ‘universal purge’.

We can measure false acquittal and false conviction for each of the four TJ systems, for different parameter values with two indicators $FA$ and $FC$. $FA$ is defined as the proportion of falsely acquitted collaborators among all collaborators. $FC$ is defined as the proportion of falsely accused innocents among all innocents. Both indicators are bounded between 0 (no collaborators/innocents are acquitted/accused) and 1 (all collaborators/innocents are acquitted/accused). Table 2 presents $FA$ and $FC$ levels of for the four transitional justice systems, total forgiveness, CTR, ATR, and universal purge as a function of destroyed evidence $q$, fabricated evidence $p$, and the proportion of collaborators, $\delta$, among politicians competing for office.

In order to calculate an entry for a particular institution, I identified the equilibrium outcomes for the parameter values specified in each column. For instance, in the ‘destroyed high’ and ‘fabricated low’ column of the CTR equilibrium profile, there are two equilibria for high numbers of collaborators ($NN;−1,1)$ and
NN;1,1) and one equilibrium for low numbers of collaborators (NN;−1,−1).\textsuperscript{15} Since in the (NN;−1,1) equilibrium, V always votes for P, neither I or C type is sanctioned, but some are eliminated by the lustration procedure. Hence, \(FA = 1 - q\), but \(FC = p\). The levels of false acquittal and false conviction for the remaining institutions and parameter values are calculated in a similar way. Consider, as another example, the ATR strategy profile TT, which constitutes an equilibrium when levels of fabricated evidence are low and there are more collaborators than innocents. In this case, the State Prosecutor always initiates trial resulting in maximizing the error of false conviction (hence FC = 1) and minimizing the level of false acquittal (hence FA = 0). Let us also define the concept of ‘performs better’ and ‘performs worse’. Procedure A performs better (worse) with respect to avoiding error \(e\) than procedure B when procedure A makes error \(e\) only when procedure B also commits error \(e\) and if sometimes, procedure A (B) does not make error \(e\) although procedure B (A) does. The most important conclusions from Table 2 can be summarized in four empirical implications:

1. \textbf{Empirical implication 1:} when little evidence of collaboration was fabricated or destroyed, CTR institutions will perform better than ATRs with respect to avoiding FA errors and will not perform worse with respect to FC errors.

2. \textbf{Empirical implication 2:} when little evidence of collaboration was fabricated, but a considerable amount of it was destroyed, CTR institutions will perform better than ATRs in avoiding FC errors, but ATRs will perform better with respect to avoiding FA errors.

3. \textbf{Empirical implication 3:} when little evidence of collaboration was destroyed, but a considerable amount of it was fabricated, CTR institutions will perform better with respect to avoiding FA than ATR, but ATRs will perform better with respect to FC.

4. \textbf{Empirical implication 4:} the policy of ‘universal purge’ performs worse than CTRs, ATRs, and ‘total forgiveness’ with respect to avoiding FC and ‘total forgiveness’ performs worse than CTRs, ATRs, and ‘universal purge’ with respect to avoiding FA.

CTRs exploit their targets’ uncertainty as to whether evidence documenting their criminal activity exists. If only perpetrators and ex-collaborators are sufficiently dissuaded by a penalty for lying, they prefer to pay the cost of revealing their past collaboration to risking criminal prosecution or professional banishment. If the incentives in CTR procedures are adequately designed, referral to external evidence might be quite redundant. The threat of potential evidence against perpetrators will be sufficient. Under an ideally functioning CTR

\textsuperscript{15} Only the strategy profile part of the equilibrium is necessary to calculate FA and FC levels.
procedure, only wrongdoers will testify to their collaboration, while all the innocents will refrain from doing so. Thus, under certain circumstances, CTRs can perform better than ATRs, because instead of relying on existing evidence, they take advantage of perpetrators’ beliefs about the evidence preserved.

The problem with exclusively using existing evidence is that if this evidence is unreliable, ATRs cannot escape the trade-off between false conviction and false acquittal. If strong evidence of collaboration is required by truth revelation procedures for positive verification, many of those guilty of crimes will remain not accused (because of destroyed evidence). If little evidence is sufficient to place charges of collaboration, former dissidents whose files were fabricated might also suffer, becoming the post-mortem victims of the authoritarian regime. Thus, if we are constrained to an ATR environment, with unreliable evidence, we are forced to decide between these two errors (we cannot minimize both). Under ATR, once the level of evidence necessary for conviction has been set, all perpetrators for whom evidence at that level and above was destroyed are beyond justice and all innocents for whom evidence at least at that level was fabricated are accused. In contrast, CTR-type lustration laws and truth commissions can be resistant to both types of errors.

It is important to make a note about choosing the best truth-revelation procedure. Empirical Implication 1 implies that designers of truth-revelation procedures in countries with few destroyed or fabricated files should choose to exploit incentives over exploiting evidence, if their goal is to sanction all perpetrators while keeping the risk of accusing innocents below a tolerable threshold. CTRs, however, still do not reduce the level of false conviction to 0. There exists a solution to this problem not captured by the model above: procedures of appeal. If an innocent is pronounced guilty he can appeal the decision to a court or commission of appeal which, by means of cross-examination, may considerably reduce the frequency of false convictions. Adding procedures of appeal to the CTR model is one path of developing future research in this area. Another path of research would entail introducing a truth-revelation procedure that would combine features of a CTR with those of an ATR, allowing the screening agency or truth commission to start acquiring evidence before the declaration or denial of a target. This would allow the agency or commission to develop private information about the politician’s type, allowing for a posterior belief based on more than just the proportion of collaborators and innocents in the society. Furthermore, one could complicate the payoff structure by accounting for the fact that the more politicians declare collaboration, the less costly it is. This is consistent with both common sense and reality – the more frequent the revealing of collaboration, the less attention it attracts.

The final section is devoted to deriving policy recommendations from the empirical implications presented earlier. I explain how interviews with elites in three democratizing countries have been used to assess the extent of fabricated evidence and the extent of destroyed evidence. Using these data we can
use the findings from our institutional analysis to make policy recommendations about transitional justice systems that reduce errors of false acquittal and false conviction.

4. Discussion and Recommendations

Results from the previous section state that CTR institutions are capable of minimizing both false acquittal and false conviction errors when the extent of destroyed and fabricated evidence are low. But how can we know how much evidence was fabricated or destroyed? In this section I utilize one approach that can be taken to address this question. This direct measure does, however, require intensive data collection. Thus, I have limited it to three post-communist countries: Poland, Hungary, and the Czech Republic. These countries have similar political institutions and common histories, allowing us to control for variables that could otherwise have an impact on transitional justice design. Their communist regimes lasted a similar number of years, the countries democratized at about the same time and joined the European Union on the same day after witnessing converging patterns of support for unification. Their electoral laws and constitutional designs are similar with mild exceptions (Hungary has a unicameral parliament, as opposed to Poland and the Czech Republic; the Polish President has more powers than the Czech and Hungarian ones). At the same time, their choices of TJ institutions varied enormously.

4.1 Direct Measures of Destruction and Falsification

The strategy for estimating the degree of destroyed and falsified evidence is to use direct evidence in the form of data from elite interviews with potential targets of lustration. Although elites do not know exactly the extent of evidence fabrication and destruction, their beliefs about these events are even better for the purpose of evaluating CTRs than the actual figures.

Between January and July 2004, I conducted interviews with 101 elite members in Poland, Hungary and the Czech Republic. The respondents included politicians of parties represented in the legislature, justices, prosecutors, attorneys, academics and journalists. The politicians were sampled to represent groups most involved in the creation of the transitional justice regimes in the three respective countries. For this reason, the sample over-represents members of anti-communist parties at the expense of members of successor-communist parties. In all three countries, the sample is skewed in the same direction. Hence, for comparisons across the three countries it does not pose a problem. Non-political elites were sampled to represent groups subjected to lustration and there was an over-representation of academics and journalists, who were more eager to respond to interview requests. Again, this tendency in the sample is
very similar in all three countries. All interviews were conducted personally by
the author and lasted between half an hour and four hours. The interview proto-
col included the following questions: (a) to what extent do you believe that files
of the secret police were destroyed? (b) to what extent were files of the secret
police fabricated? All questions were open, and respondents were not pressured
into answering them if they did not wish to do so. The questions were tran-
scribed and extracted into a qualitative response database. Next, each inter-
viewed elite member was assigned to the category closest to his response by two
independent coders. Table 3 shows beliefs of elites in the three countries regard-
ing destroyed and falsified evidence.

In Poland, interviewees showed substantial agreement that there was con-
siderable evidence destruction and little falsification. Respondents in Hungary
and the Czech Republic also perceived little evidence falsification. There was
less agreement in the Czech Republic and Hungary on the levels of evidence
destruction, but the results suggest that it was probably relatively high in the
Czech Republic and relatively low in Hungary. We can combine the results from
institutional analysis and qualitative research to formulate policy recommenda-
tions for Poland, Hungary, and the Czech Republic.

4.2 Choosing the Best Truth-revelation Procedure

Since 1998, Poland has had a moderate CTR in force. As shown in the previous
section, CTRs reduce false conviction errors when the extent of falsified evi-
dence is low, but can induce under-reporting if the levels of destroyed evidence
are high. Since this was not the case in Poland, we would not expect the CTR
procedure to be particularly useful in Poland, unless avoiding false conviction is
considerably more important than avoiding false acquittal. The Czech Repub-
lic’s small degree of falsified evidence coupled with high levels of evidence
destruction implies that CTRs will not reduce errors of false acquittal.17 With
low levels of falsified evidence, CTRs may, however, eliminate false conviction
errors. In 1991, the Czechoslovak legislature adopted a harsh ATR procedure,
which was twice extended (by the Czech parliament) in 1996 and 2001. If the
Czechs place more weight on avoiding false conviction than acquittal, a CTR
may be the recommended truth-revelation procedure.

Data from the 2004 survey referred to in the Introduction (Nalepa, 2007)
indicate that Poles indeed care more about false acquittal than about false con-
viction, whereas Czechs care more about false conviction than about false
acquittal. Thus, one can for these two countries make different policy recom-
mendations, indicating an ATR for Poland, but CTR for the Czech Republic.

---

16. The chi-square test measuring how different the distribution of responses differed from a
uniform distribution was not significant.

17. We should keep in mind that this result is not significant.
### Table 3. Elite Interview Responses to Questions about Destroyed and Fabricated Evidence

<table>
<thead>
<tr>
<th></th>
<th>Poland</th>
<th>Hungary</th>
<th>Czech Republic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all or sporadically</td>
<td>1 (1.9%)</td>
<td>14 (27%)</td>
<td>6 (25%)</td>
</tr>
<tr>
<td>Somewhat</td>
<td>16 (31%)</td>
<td>10 (19%)</td>
<td>3 (12.5%)</td>
</tr>
<tr>
<td>Considerably</td>
<td>20 (38.5%)</td>
<td>6 (11.5%)</td>
<td>4 (16.6%)</td>
</tr>
<tr>
<td>Don’t know</td>
<td>2 (3.9%)</td>
<td>0 (0%)</td>
<td>3 (12.5%)</td>
</tr>
<tr>
<td>No answer</td>
<td>13 (25%)</td>
<td>22 (42%)</td>
<td>8 (42.3%)</td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
<td>52</td>
<td>24</td>
</tr>
<tr>
<td>χ² (4)</td>
<td>27.81</td>
<td>10.77</td>
<td>3.92</td>
</tr>
<tr>
<td>P</td>
<td>.0003</td>
<td>.2752</td>
<td>.5801</td>
</tr>
</tbody>
</table>

*Notes:* the χ² statistic test is provided for the null hypothesis that elite responses were distributed uniformly across all categories (Not at all or sporadically, somewhat, considerably, ‘Don’t know’ and ‘No answer’) and across the first three categories (after eliminating ‘Don’t know’ and ‘No answer’).
The Polish CTR will have a mild effect on reducing false acquittals, because too much evidence has been destroyed for the benefits of CTRs to take effect. In the Czech Republic, reforming the ATR into a CTR procedure could help reduce false conviction levels, although it would not reduce false acquittal. However, one can unambiguously recommend a CTR for Hungary, because, given the quality of evidence in that country, a CTR will perform unequivocally better than an ATR. Hungary’s low levels of falsified and destroyed evidence suggest that a CTR procedure would be unequivocally better in terms of reducing false acquittal and false conviction. However, since 1996, the Hungarians have had an ATR in place.

5. Conclusion

This article introduces a distinction between accusation-based and confession-based truth-revelation procedures as an alternative to the more popular distinction, between lustration laws and truth commissions. Such a framework allows us to make use of numerous institutional similarities between truth commissions and lustration laws. My goal was to compare ATR and CTR truth-revelation procedures with respect to achieving two normative goals of transitional justice: avoiding errors of false conviction and false acquittal. While scholars of TJ may be interested in other questions as well, empirical research suggests that citizens of new democracies consider false acquittal and false conviction as particularly salient standards of performance. For instance, the analysis of data from a 2004 survey on representative national samples of Poles, Hungarians and Czechs (\(N = 3057\)) finds that the extent of individual concern about false acquittal and false conviction explains demand for transitional justice better than perceptions of communist threat, past voting behavior, or one’s involvement in the former democratic opposition.\(^{18}\)

Of course, the problems of false acquittal and conviction are present in any system of justice, not only transitional justice. However, because of the notoriously low reliability of evidence in democratic transitions, the issue is of particular importance in transitional justice. Crimes committed by the ancien régime may have occurred years before any judicial action took place and, at least until the transition, files documenting these crimes were under the control of the authoritarian regime. Thus, there are good reasons to question the reliability of such evidence and any system of TJ must address this problem.

\(^{18}\) The question used to assess sensitivity to false acquittal was ‘the problem with lustration is that files of the secret police were destroyed, so that many collaborators will not be uncovered anyway’. The question gauging sensitivity to false conviction was ‘the problem with lustration is that files of the secret police are not reliable as evidence of collaboration and using them in the lustration procedure may result in accusing innocent people’ (Nalepa, 2007).
I employed formal modeling to uncover when CTRs induce perpetrators of human rights or secret agents of the former authoritarian regime to reveal the truth about their past while preventing those innocent of such collaboration from falsely self-reporting. The findings are that successful CTRs can be set up when the levels of destroyed and fabricated evidence of the secret police activity are low. CTRs will also reduce false conviction when little evidence has been fabricated, although much was destroyed, and will reduce false acquittal when little evidence was destroyed, although much was fabricated.

Empirical implications of the theoretical model have been used for choosing the best truth-revelation procedure. I used data from interviews with elites in Poland, Hungary and the Czech Republic to assess the extent of evidence destruction and falsification. Policy recommendations were formulated for the three post-communist countries.

Future research could proceed in two directions. One would aim at resolving ambiguous recommendations for parameter values under which neither a CTR nor ATR performs unequivocally better. These ambiguities could be resolved by asking which type of error, false acquittal or false conviction, should be given more weight. Such research could be pursued within a normative framework or through surveys, by asking respondents avoiding which error should take priority over the other. A second approach would focus on modeling extensions. How robust is the result from comparing CTRs to ATRs with respect to FA and FC errors to enriching the model so that its assumptions more adequately comport to reality? One possibility is to include a temporal dimension and to make the probability of destroyed evidence \((1 - q)\), and falsified evidence \(p\), depend on the proportion of positive declarations filed thus far. In this situation, politicians would be updating their beliefs about \(p\) and \(q\) by observing how frequently declarations are filed and how frequently non-declarations are sanctioned with loss of office. I admit that such an extension deserves attention. This article, however, should be treated as merely a first step in the direction of a more extensive comparison of ATRs and CTRs.

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