Standard definitions of transitional justice identify its context (transitions from authoritarian regimes to rights-respecting rule-of-law regimes), its core institutions (of which the most prominent are criminal tribunals and truth commissions), and its broadest aspirations (establishing historical truth, achieving retributive justice for human rights abuses, and, ultimately, establishing peace or reconciliation among the citizens of the new regime). Commonly, truth commissions are identified with the aspiration to truth and reconciliation, and criminal tribunals are associated with the goal of retributive justice and accountability. Some scholars pose the choice between truth and justice as dilemmatic; however, most scholars now acknowledge that, while there may be heuristic value in contrasting the goals of truth commissions and criminal proceedings, in practice both can serve the goals of truth, justice, and reconciliation. Truth commissions, for example, involve testimony about individual crimes as wrongful and thus provide some justice to victims through the acknowledgment that they were unjustly treated. Trials depend for their integrity on a detailed and precise
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factual record and so contribute to the reconstruction of a public history of human rights abuse.²

Empirical political science, however, has yet to clearly establish whether and how criminal prosecutions can contribute to what is arguably the highest goal of transitional justice institutions: reconciliation. Ultimately, one might argue, a crucial test of transitional institutions is whether they establish a foundation for members of societies that were deeply torn by violence to live peacefully together. This is not to deny that truth and justice are intrinsic goods; nor does the achievement of a measure of truth or justice always contribute positively to the goal of peace or reconciliation.³ But some transitional mechanisms may contribute to reconciliation by promoting truth, and others may do so by promoting justice and accountability. Research in the transitional justice field has only recently begun to inquire into the particular institutional features of criminal tribunals that can contribute to reconciliation. How do different institutional strategies affect citizens’ willingness to live together on peaceful terms? Does the contribution of criminal trials to reconciliation stem from their contributions to justice through the prosecution and conviction of guilty perpetrators or from their contributions to truth through the creation of an authoritative and condemnatory public record of human rights abuses?

This chapter employs the methods of empirical political science to help answer these questions. The motivation comes from observing distinct patterns in refugee returns to two municipalities that were the sites of egregious human rights violations during the civil war: Prijedor and Srebrenica. An in-depth analysis of the prosecutorial strategies of the International Criminal Tribunal for the Former Yugoslavia (ICTY) reveals that international prosecutors employed contrasting approaches in dealing with perpetrators of war crimes in the two municipalities. The tale of two cities allows us to focus on the mechanism linking ICTY prosecutorial strategies to refugee returns. The detailed analysis of Prijedor and Srebrenica that I develop in a later section suggests that paying the price of plea bargaining in order to reconstruct the chain of command and reach order-giving perpetrators depresses reconciliation. I conjecture that reconciliation may be lacking because justice awarded to victims of plea bargaining perpetrators is severely
constrained. I notice, however, that limiting the analysis to these two municipalities alone does not allow us to test simultaneously competing explanations for reconciliation, because Prijedor and Srebrenica are not identical in some important respects that could be responsible for returns, as well. Acknowledging the limitations of a comparison between two municipalities that diverge on more dimensions than just the prosecutorial strategies used by the ICTY, the chapter sets out to explore the relationship between prosecutorial strategies and reconciliation for the set of all municipalities in Bosnia and Herzegovina. I have combined census and electoral data with information on the actions taken by the ICTY’s prosecutors and justices on perpetrators of war crimes in specific municipalities. This dataset allows for rigorous micro-level tests of the purported relationship against competing explanations. Using multivariate statistical analysis, I explore the relationship between one measure of reconciliation (explained further later) and a range of independent variables, including rates of conviction, plea bargaining, the intensity of nationalist sentiments, ethnic diversity, and economic conditions. Surprisingly, the relationship suggested by the isolated comparison of Prijedor and Srebrenica is reversed by the multivariate analysis.

One of the difficulties in amassing empirical evidence for the effects of different transitional justice practices on reconciliation lies in deciding how to conceptualize “reconciliation” as a measurable empirical phenomenon. In its most ambitious formulation, reconciliation would go far beyond the cessation of civil conflict to capture the establishment of strong patterns of social trust and cooperation across ethnic lines. In contexts with deep histories of conflict, it is unlikely that this goal will be reached in the short or medium term. Moreover, even putting aside the difficulties of gathering reliable data on different measures of social trust and cooperation, the longer the road to full reconciliation, the greater the number of intervening factors that might contribute to explaining it. As a starting point for empirical investigation of the impact of criminal tribunals on reconciliation, I argue here for a more modest approach—one that focuses on the return of refugees to their home regions in the wake of gross human rights abuses. While refugee returns fall short of full reconciliation, they are one of its preconditions: social trust and cooperation across
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ethnic lines cannot begin until populations have been resettled in the aftermath of violent conflict. The present study proceeds by examining the impact of different ICTY prosecutorial strategies on refugee returns. Specifically, I contrast the impact of (truth-producing) plea bargaining with that of (justice-producing) criminal convictions. Through micro-level time-series cross-sectional analysis, I show that establishing a detailed historical record at the local level has a greater impact on refugee returns than the full prosecution and punishment of high-ranking perpetrators. Truth and justice both matter for reconciliation, but truth appears to matter more.

1. The Functions of International Criminal Tribunals

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was created to prosecute those responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia in the period after 1991. This tribunal is the most prominent example of the international community’s involvement in the peace and democratization process in the Balkans. As summarized on its official website, the ICTY’s mandate consists of spearheading the shift from impunity to accountability, establishing the facts, and giving voice and bringing justice to thousands of victims. There is little doubt that the ICTY has fulfilled the fact-finding part of its mandate; it has produced massive evidence of war crimes committed in the territory of the former Yugoslavia. For instance, the late Slobodan Milosevic’s trial generated thousands of pages of evidence (which, incidentally, were not used to render a verdict because Milosevic died before his trial concluded). According to a former ICTY staffer, the evidence accumulated by the ICTY in all of its trials by 2006 supports the prosecution of a further nine hundred war criminals. In terms of delivering accountability, however, the ICTY’s output has been strikingly low—particularly if this output is measured relative to the costs of maintaining the tribunal. In January 2004, the ICTY’s budget totaled US$135.9 million. By the end of 2008, the ICTY had indicted 161 individuals and proceedings were still ongoing for 116 of them. The ICTY found 57 people guilty and sentenced them collectively to a little over eight hundred years.
It is tempting to conclude that the tribunal has produced very little justice at a very great expense. This would, however, be a hasty conclusion if the tribunal’s proceedings buttressed a popular sense of justice and the rule of law and promoted reconciliation in ways that we have not yet learned to measure adequately. A substantial conviction rate—when obtained through criminal proceedings that meet high standards of due process—does signal the end of a culture of impunity, but it is a crude measure of whether the tribunal’s larger mandate has been fulfilled.

The ICTY’s mandate reflects a broad consensus that a central goal of international criminal justice is putting high-ranking leaders responsible for war crimes on trial.9 Many advocates of international tribunals are attracted to them because of their perceived effect in deterring future war crimes. They believe that such tribunals dissuade leaders from issuing criminal orders. From Nuremberg to the establishment of the International Criminal Court, international war crimes tribunals have concentrated their efforts on reaching the top commanders responsible for war crimes, crimes against humanity, and genocide.

Putting aside the question of whether deterrence is a reasonable expectation of international criminal tribunals,10 transitional justice advocates advance a number of further justifications for them. Most important for our purposes, there are several reasons for thinking that criminal prosecutions of human rights violations in transitional societies can contribute significantly to the aim of reconciliation. First, it seems reasonable to believe that restoring citizens’ trust in political institutions requires that rights abusers, especially those in positions of political power, be held accountable for their actions. This logic underlies lustration, as well as criminal prosecutions. Further, public confidence in rule of law institutions is likely to be deeply undermined if a culture of impunity prevails in post-conflict societies. A key argument for focusing on the prosecution of high-ranking decision makers is that prosecuting order-takers without going higher up the chain of command is so great a failure of justice that it jeopardizes the very possibility of law-governed political community.11

The challenge, however, is that, in order to reach the high-ranking perpetrators, prosecutors first need to reconstruct the chain of command and the chronology of events. One strategy is
to obtain information about the chain of command or chronology of events by building the case record from low-ranking perpetrators through medium-ranking ones up to the top-echelon commanders responsible for issuing the orders. Another strategy proceeds through plea bargaining with medium-ranking perpetrators who are offered reduced sentences in exchange for their testimony. Both techniques, once effected, make it possible to reach many perpetrators, including mid-level and low-ranking ones.

International tribunals—such as the ICTY—typically pursue low-level prosecutions with the primary purpose of building the evidentiary record to facilitate successful high-level prosecutions. To be sure, plea bargaining produces a fair amount of truth by way of the testimony of certain perpetrators who have been offered reduced sentences, but international criminal tribunals treat obtaining this truth as instrumental to the superseding objective of prosecuting high-ranking perpetrators. The implication of this strategy that is problematic from the standpoint of justice is that most low-level perpetrators will not be prosecuted at all and will receive de facto amnesty.\textsuperscript{12} It is possible, however, that, inasmuch as trials fail to deliver justice to a wide range of perpetrators, they make up for this loss by producing truth in the process of hearing testimony from plea bargaining defendants.

If this is the case, then the supposed choice between trials and other forms of transitional justice (such as truth commissions or amnesties) is not really a choice between truth and justice. As noted earlier, truth commissions obviously deliver goods that we associate with justice: they establish that some actions are morally wrong and shame perpetrators who are exposed as part of the truth commissions’ proceedings. But trials can also produce some goods that we associate with truth. They create a public record of atrocities, an official account of what happened, thereby acknowledging victims’ suffering. The Nuremberg trials, over and above their seminal significance in applying international law to crimes committed by a state, also served the purpose of educating the global public about the Holocaust. Plea bargains, in particular, yield enough truth about the past that this benefit may outweigh the loss of justice in bypassing low-rank perpetrators who would need to be prosecuted in order to reconstruct the chain of command.
Although these theoretical reflections set out plausible accounts of the relationship between the impact of criminal tribunals’ truth and justice functions on reconciliation, ultimately these are empirical questions. Regrettably, empirical research on these questions is still in its infancy.

2. Empirical Research on International Criminal Tribunals

Empirical studies of the consequences of international criminal tribunals in transitional contexts are still relatively few in number. In part because of the difficulty of operationalizing the concept of reconciliation, which I shall discuss further later, it is even rarer for scholars to investigate the impact of international tribunals on reconciliation. Clearly, it is impossible to assess the relative effectiveness of alternative institutional strategies available to tribunals without first identifying some measure of reconciliation as the dependent variable of one’s study. Studies that have focused on variables that are closely related to reconciliation (democratization, post-conflict peace, deterrence of future violence, and respect for human rights) have tended to yield inconclusive findings. This is in part because each of these concepts resists easy operationalization. To date, the empirical evidence does not support a strong claim for the impact (positive or negative) of international criminal tribunals on reconciliation or related outcomes.

A further limitation of existing research on international tribunals is that scholars tend to focus on the impact of prosecutions of high-ranking officials without exploring in any detail prosecutorial strategies toward mid-level or low-ranking officials. Distinguishing the effects of prosecutorial strategies at different levels of the decision-making hierarchy is important for two principal reasons. First, an exclusive focus on high-ranking prosecutions fails to account for the possibility that victims’ demands for justice may be directed toward low-ranking perpetrators. Suppose that victims prefer that justice be done to perpetrators who directly inflicted harm on them, rather than to perpetrators who issued orders. If this is so, greater reconciliation will occur when large numbers of low-ranking perpetrators are prosecuted than when fewer high-ranking perpetrators are brought to trial. In the aftermath of war,
high-ranking perpetrators—the order-givers—are geographically removed from the victims’ residence, while low-ranking perpetrators—the order-takers—often have a glaring presence in their victims’ lives.

Consider as an illustration the following excerpt from Ed Vilimamy’s story about Srebrenica ten years after the atrocities were committed there: “As she [Sija Mustafic] speaks, a man walks by the window, checking electricity meters. ‘He is doing that now,’ says Sija. ‘But during the war, he was burning houses. I know they killed my husband and my son. I know that my neighbors were involved in this.’” It may be that victims would prefer to see these direct oppressors put on trial, rather than the perpetrators residing at the commanding heights. My research in this chapter takes seriously the possibility that truth- and justice-seeking processes contribute most effectively to reconciliation when they target the most localized human rights abuses.

Second, as noted earlier, prosecutorial strategies toward mid- and low-ranking perpetrators may involve an aggressive policy of plea bargaining aimed at building evidence against high-ranking decision makers. Although not at the center of transitional justice debates, plea bargaining has captured the attention of some students of transitional justice. Despite a fair number of theoretical studies and numerous anecdotes illustrating the effects of plea bargaining in transitional justice contexts, however, no transitional study has yet undertaken a systematic investigation into the effects of plea bargaining on reconciliation. This gap makes it impossible to judge whether plea bargaining’s truth-gathering function can have a positive impact on reconciliation or whether plea bargaining’s compromise with justice may have a negative impact. Thus, one contribution of the research presented in this chapter is to build the body of evidence concerning plea bargaining as a prosecutorial strategy. My research reveals that prosecutions of low-rank perpetrators do not contribute to reconciliation as much as confessions extracted from medium-rank perpetrators in the process of plea bargaining.

Finally, let me return to the vexing challenge of operationalizing “reconciliation.” Theorists of transitional justice remain far from consensus on a definition of this difficult concept. Empiricists, for their part, have yet to come up with a universal operation-
alization of the concept. Consider as an illustrative example, Africa’s Reconciliation Barometer, an annual public opinion survey, which measures “South African attitudes towards the country’s social transformation process, with particular emphasis on national reconciliation.”19 It is not clear how easily this method of operationalization can be exported to other contexts, given that, as the researchers behind the South African Reconciliation Barometer effort admit, “[t]he notion of reconciliation has firmly rooted itself in the parlance of South African society.”20 What they are referring to are the Christian origins of the concept of reconciliation. Although religion was not a dividing cleavage in South Africa, it was in other transitional justice contexts. Consider, for instance, the former Yugoslavia, where victims are often deeply ambivalent about the idea of reconciliation as the ultimate goal of transitional justice. In particular, Bosnian Muslims tend to associate this view of reconciliation with Serb Christian heritage.21 Their reluctance can be especially pronounced when the concept of reconciliation is identified with Christian theology and characterized as a relationship between victims and perpetrators: perpetrators accept blame and apologize, while victims embrace them in an act of forgiveness. One member of a nongovernmental organization (NGO), when asked about the prospects for reconciliation in the former Yugoslavia, suggests that this model is too idealistic to be practical: “Reconciliation? I don’t want reconciliation, I want accountability! There are people with whom I will not reconcile and that’s it!”22

Yet, if empirical research is to generate evidence concerning the effectiveness of international criminal justice in advancing reconciliation, finding appropriate empirical indicators of the concept is clearly an inescapable task. One approach, exemplified by James Meernik’s insightful study of the ICTY, is to address the impact of tribunal proceedings on conflict and cooperation between members of ethnic groups that were previously at war (he calls this “societal peace”).23 Meernik finds that ICTY indictments, trials, and sentencing decisions had almost no effect on societal peace as operationalized in the study, but his study measures societal peace at the aggregate level of the entire country. This research strategy does not detect whether victims direct their demand for justice toward specific perpetrators—those individuals who committed war crimes in the victims’ own city or village (by, for instance, forcing
them to flee their homes). If demand for transitional justice is individualistic, not collective, then victims will respond to trials of perpetrators who committed crimes in areas close to the victims’ residence and may be indifferent to the trials of those who committed war crimes in other places. Indeed, one might expect that they might even react adversely to such other trials. An alternative strategy to Meernik’s is the one I adopt in the present study, which reaches to the micro level of specific municipalities, starting with Prijedor and Srebrenica, and then extends to a multivariate analysis of the data in all of the municipalities of Bosnia and Herzegovina.

By analyzing data that link war crimes to the specific municipalities where they were committed, I investigate the possibility that Meernik’s finding that the ICTY had little effect was generated by his focus on the prosecution of high-ranking perpetrators and his use of an aggregated societal, rather than a disaggregated local, level of analysis. In doing so, I use data on refugee returns to specific locales as a less ambitious but more easily measurable proxy for reconciliation. When Louise Arbour, Justice and President of the ICTY from 1993 to 1999, was asked about the prospects for reconciliation in the former Yugoslavia, she responded, “First you need a will to live together.”94 I take this notion of living in the same neighborhoods as their perpetrators’ co-ethnics as my working definition of reconciliation; I operationalize it as victims’ decisions to return home to live in cities or villages whose majority population is of the same ethnicity as the perpetrators from whom victims suffered abuse during the civil war. Even though returning home may not reflect the achievement of complete reconciliation with one’s victimizer, it may well be a necessary prerequisite of reconciliation. Long before victims can start sharing democratic institutions with their perpetrators, not to mention living in the same neighborhoods as their perpetrators’ co-ethnics, they must start returning to their homes. Consequently, I use the return of minority refugees to the places where they were the subjects of human rights violations as a proxy for reconciliation. In other words, the refugee returns are used to operationalize reconciliation.

In sum, this chapter fills some of the existing gaps in the empirical literature by investigating how the prosecutorial strategy
of the ICTY affects the reconciliation of victims with perpetrators of war crimes and their co-ethnics. Intriguingly, I find that, although justice was the ICTY's ostensible goal, it has produced as an unintended, incidental consequence truth through plea bargaining. The truth produced in the plea bargaining process has brought about more reconciliation than straightforward sentencing would have.

3. A Tale of Two Cities: Prijedor and Srebrenica

The 1992–1995 war in Bosnia-Herzegovina inflicted massive human suffering on the population. All three of the major population groups in the region—Bosniaks, Serbs, and Croats—sustained significant casualties. Scholars agree that it is very hard to estimate the number of civilian deaths and especially hard to disaggregate them into Serb, Croat, and Bosniak casualties. In 1994, the CIA estimated there had been 156,600 civilian deaths in Bosnia and Herzegovina and an additional 81,500 combatant deaths. Of the combatant deaths, 45,000 were on the Bosnian government side, 6,500 on the Bosnian Croat side, and 30,000 on the Bosnian Serb side. Eric D. Weitz maintains that, in estimating the final tally of civilian deaths in the entirety of Yugoslavia, the figure of “200,000 deaths, around 50 percent Muslim, 30–35 percent Serb, and 15–20 percent Croat is probably correct.”

Patrick Ball and his collaborators from the Households in Conflict Network research group assessed the quality of the “Bosnian Book of Dead” database; they confirmed 96,895 documented deaths in Bosnia and Herzegovina, of which 66.1 percent, or approximately 64,003, were Bosniaks. Of the total deaths, 39,199 were civilian. Other sources report that among the civilian deaths, Bosniaks represented 83.3 percent, Serbs 10.2 percent, and Croats 5.4 percent. The massive scale of violence was generated by policies of “ethnic cleansing” carried out by multiple means, including genocidal killing and rape. As people fled the violence in their home regions, the number of refugees grew dramatically. By the end of the war, relative to projections from the 1991 census, 49 percent of the population in Bosnia had been displaced. The UN High Commissioner for Refugees, specially appointed by the United Nations to coordinate the return of displaced minorities, estimates...
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that the war generated approximately 2 million refugees from a prewar population of 4.4 million.31

Although the right of refugee return was a central pillar of the Dayton Accords, which officially ended the fighting, the process of returning refugees to their homes has been slow and partial. A decade after the end of the war, about half of the original refugee population had returned to the country.32 But fewer than half the total number of returnees have returned to where they are currently in a minority. Across Bosnia, returns began to increase significantly in 2000, when approximately sixty-seven thousand people returned to areas in which their ethnic group was a minority of the population. Minority refugee returns peaked in 2002; more than one hundred thousand people returned that year, but returns fell off significantly thereafter. Over the ten-year period between 1996 and 2006, a total of 446,795 people returned to areas in which they were an ethnic minority.33 It is specifically minority refugee returns that I use to operationalize reconciliation.

No two cases represent the dilemma of refugee returns as well as Prijedor, in the northwest of Bosnia-Herzegovina and Srebrenica in the east. Both places were sites of unspeakable atrocities. In 1992, as war was unfolding in the east of the county, Serbs in Prijedor gradually started establishing institutions parallel to the official Bosniak ones. In March of that year, they took over the television station, and, by April, they already controlled the police and military. By the end of the month, an alternative Serbian enforcement apparatus had taken over the town under the pretext of protecting Serbs from Bosniak “rebels.” In the meantime, Bosniaks and Croats living in villages of the municipality of Prijedor fled their homes while the area was under siege by Serb troops. More than three thousand refugees (mostly men) were captured by the Serbian army and marched into the specially established camps. Political leaders and intellectuals from the towns of Prijedor and Kozerac were kept in Omarska, while the Keraterm and Trnopilje camps were set up as investigation centers for screening out undercover participants in the Bosniak and Croatian rebellion from regular civilians. In practice, Omarska and Keraterm were death camps, where inmates, primarily men, suffered severe beatings and malnourishment. Eventually, these people were executed. Trnopilje was a concentration camp mostly for women, many of
whom were sexually abused. As a result of actions carried out by the Serb army, out of a population of fifty thousand Bosniaks living in the Prijedor municipality before the war, only slightly more than six thousand remain there today.34

The Red Cross was not admitted into the camps near Prijedor because they were run by civilians, not the army.35 The first witness to discover these sites was Ed Vulliamy of The Guardian. Vulliamy’s and Roy Gutman’s reports36 dramatically contributed to the awareness of the camps among members of the international community.37 Within months, the U.S. ambassador to the UN established a commission of experts to prepare a report on the atrocities in the Balkans.38 The commission, chaired by Cherif Bassiouni, provided a 131-page report that systematically documented the ethnic cleansing in the former Yugoslavia. The report recommended the creation of a Nuremberg-style tribunal to prosecute war criminals.39 The ICTY’s first indictments, issued on February 13, 1995, were those of two Omarska and Keraterm perpetrators, Dusko Tadić and Goran Borovnica. These two had supplied the Serb army with death lists of intellectuals living in Kozarac (a major town in the Prijedor municipality) and then personally supervised acts of torture in the camps.

Many scholars, including Cherif Bassiouni, believed that establishing an international tribunal would end the interethnic violence in the territory of the former Yugoslavia, but, within four months of the initial indictments, another massacre took place, this time in Srebrenica, in the eastern part of Bosnia. Ironically, the massacre occurred while the ICTY was preparing to indict two Bosniak Serbs, Radovan Karadžic and Ratko Mladic.40

During the Balkan wars of the 1990s, Srebrenica became the site of one of the most embarrassing failures of the international peacekeeping community. The area had been marked off as one of the “safe zones” protected by the United Nations Protection Force troops (UNPROFOR).41 For this reason, Bosniaks from the eastern part of the Republic flocked into Srebrenica. But, in the summer of 1995, Serbian fighters from the Army of Republika Srpska under the command of Ratko Mladic shelled the UN posts. North Atlantic Treaty Organization (NATO) forces protected the peacekeepers with air strikes. In retaliation, the Serbian fighters took thirty Dutch UNPROFOR troops hostage. NATO, however,
refused to intervene. Shortly afterwards, an agreement was struck between Mladic and the Dutch Defense Minister, Joris Voorhoeve, which freed the troops under the condition that the Muslim refugees would be deported from Srebrenica after all adult men were screened for possible war criminals. As a result, men between the ages of sixteen and sixty were isolated and detained in an area within the municipality of Srebrenica called Potocari. At the same time, another column of refugees—a third of whom were Bosniak fighters—began to make their way towards Tuzla, northwest of Srebrenica. They were intercepted by other units of the Serb enforcement apparatus, and the entire group of refugees was captured and sent to the Potocari detention center. From there, all the refugees were gradually relocated to places of execution. According to the most recent estimates, more than seven thousand Bosniak men and boys were summarily executed and buried in mass graves. The women were victimized through programmatic rape, an ethnic-cleansing policy recognized by the ICTY years later as a war crime.42

The truly horrific events in Prijedor and Srebrenica during the war caused massive suffering in both regions; however, the rates of minority refugee returns in the two regions were significantly different. In this section, I use case studies of Prijedor and Srebrenica to explore whether any part of the difference in refugee return rates might be explained by differences in the ICTY’s prosecutorial strategies in the two regions. Prijedor and Srebrenica were both sites of gross human rights violations during the war. Both places are similar in terms of their proximity to the border, size of the Serbian population, ethnic composition, economic development before the war, and intensity of nationalism. The aggregate output of the ICTY regarding war crimes committed in the two municipalities is also strikingly similar. They exemplify very different rates and patterns of minority refugee returns, however. Figure 11.1 presents the annual minority refugee returns to Srebrenica and Prijedor after the Dayton accord and compares them to the number of minority refugees returning on average to municipalities in Bosnia.

These data reveal that, while the number of returns to Prijedor was consistently well above average, the number of returns to Srebrenica was consistently below that average. Moreover, most
3.1. The Central Hypothesis: ICTY Prosecutorial Strategy

At first glance, the ICTY appears to have accorded similar levels of attention to both Prijedor and Srebrenica. They are comparable in terms of aggregate sentencing decisions. Table 11.1 contains data with the aggregate output of the ICTY between 1996 and 2005 for the prosecution of war crimes committed in Prijedor and Srebrenica.

In trials of defendants accused of war crimes committed in Prijedor and Srebrenica, the ICTY sentenced those found guilty to a
total of more than 120 years in prison for each municipality. Yet, despite the similarity in aggregate sentencing decisions, the numbers of minority refugees returning to Prijedor and Srebrenica are dramatically different. Figure 11.1 points to Prijedor as one of the leading municipalities to which minority refugees have returned, with 13,728 returns by 2005. Srebrenica is among the last, with only 2,884.43 Thus, if the ICTY’s operations did have an impact on different rates of refugee returns, this impact must have been through mechanisms at the micro-level of prosecutorial strategies. These differences in prosecutorial strategies can be observed in the different numbers of defendants, counts, and indictments. I discuss them in detail later.

To reconstruct the chain of command in Prijedor, the ICTY was forced to put low-ranking perpetrators on trial. Dusko Tadic, the ICTY’s first defendant, was identified in Munich, where he had escaped to avoid being drafted into the Bosnian Serb Army. The person who identified him was a victim of his from the Omarska concentration camp. His case brought 153 other victims to the Hague to testify. This stands in stark contrast with Srebrenica, where Drazen Erdemovic, a medium-ranking perpetrator, confessed his role in the Srebrenica massacre even before he was indicted.44 His voluntary revelation, followed by a guilty plea, enabled the tribunal to avoid prosecutions at the lowest level. By revealing his accomplices, Erdemovic helped the court reconstruct the chain of

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command, as well as the chronology of events. His sentence for participation in the massacre amounted to ten years and was reduced to five in 1998. Upon release from prison, he was covered by the witness protection program. According to an anonymously interviewed former ICTY staffer, the Erdemovic case was very damaging to the image of the Tribunal but was crucial to achieving further indictments. A total of nineteen persons—mostly high-ranking perpetrators—were prosecuted in the Srebrenica case.

How did the victims respond to the ICTY’s work? They did not begin returning to their homes until 2003. Victims of the Srebrenica massacre did not see the low-ranking order-takers—those who committed the crimes directly—prosecuted. Instead, they saw the prosecution of high-level perpetrators who could be reached more easily because of Erdemovic’s confession. A similar trend became visible in Prijedor when the ICTY stopped prosecuting lower-level perpetrators. After the events and chain of command had been fully reconstructed, such prosecutions were no longer needed. In response, refugee returns peaked in 2000 and then gradually started falling (see Figure 11.1).

The Tribunal’s reputation in the Srebrenica investigation was undermined not only by its failure to prosecute low-ranking perpetrators but also by Erdemovic’s plea bargain. That Erdemovic’s revelation was crucial to issuing other indictments did little to comfort his victims. Furthermore, Erdemovic’s sentence reduction induced other perpetrators to come before the court before being indicted, to plead guilty, and to offer information in exchange for sentence reductions. Critics of the ICTY claimed that, from the point of view of victims, this led to a very undesirable outcome: not only were the medium- and low-ranking perpetrators who had directly inflicted harm upon them prosecuted selectively, but, when the perpetrators did stand trial, they received shockingly soft sentences.

Eventually, the court stopped offering incentives for plea bargaining because it no longer needed the information that low- or medium-ranking perpetrators had to offer. Thus, by the time Deputy Commander Drago Nikolic decided to come before the court and plead guilty, the chain of command in Srebrenica had already been reconstructed, and the court knew all the facts. Nikolic was a medium-ranking perpetrator who had coordinated the transportation of the captured Bosniaks to concentration camps around
The prosecutor asked for a twenty-year sentence; however, in order to reverse the trend of reducing sentences, the judge sentenced Nikolic to twenty-seven years. The perpetrators’ response was immediate: the self-revelations stopped instantly, as did the trials of many low- and medium-ranking perpetrators.

Despite similarities in the aggregate ICTY outputs, there appears to be a marked difference in the prosecutorial strategies employed for prosecuting war crimes in the two municipalities. War crimes committed in Prijedor were followed by intensive prosecutions at the lowest level. War crimes in Srebrenica resulted in almost no prosecutions at the lowest level, but the ICTY engaged in extensive bargaining with mid-level perpetrators to reach the high-level perpetrators. Prijedor had significant rates of minority refugee returns, but Srebrenica saw very few minority refugees returning home.

The low level of minority refugee returns to Srebrenica contrasted with the high level of minority refugee returns to Prijedor suggests the following hypothesis: prosecuting low-level perpetrators increases refugee returns, while non-prosecution and plea bargaining decrease refugee returns. In other words, the prosecutorial strategy of bypassing low-rank order-takers and engaging in plea bargaining with a few medium-rank perpetrators to ultimately focus prosecutions on high-rank order-givers undermines victim reconciliation; increasing the number of low-ranking prosecutions has a positive impact on reconciliation. Before accepting this hypothesis, though, we must consider other differences between the two municipalities that could have generated such distinct patterns of returns. It is possible that we have neglected some important difference between Prijedor and Srebrenica that affected refugee returns. Among such alternative explanations, I consider the proximity to the border, ethnic composition, macroeconomic conditions, virility of nationalism, and the magnitude of the atrocities committed.

3.2. Alternative Explanation 1: Proximity to the Border

The first competing explanation for the divergent patterns of refugee returns is the proximity to the border with Serbia. One could argue, for instance, that, because Srebrenica is closer to the
Serbian border than Prijedor, minority refugee returns should be lower. But returning to Prijedor could be just as risky as returning to Srebrenica because of Prijedor’s proximity to Krajina, a Serb-inhabited part of Croatia marked by the most virulent nationalism at the war’s onset. Prijedor’s distance from Krajina, past the border with Croatia (14.87 miles),\textsuperscript{47} is not much greater than Srebrenica’s distance from the border with Serbia (6.12 miles). Thus, proximity to the border does not plausibly account for the differing refugee patterns.

3.3. Alternative Explanation 2: Demography

A related alternative explanation is the ethnic composition of the two municipalities before and after the war. The population of Prijedor before the war (113,000) was divided almost evenly between Serbs and Bosniaks (with a population of a little under 50,000 for each). As of 2010, it was 105,000, but most of these inhabitants were Orthodox Serbs. What was once an ethnically diverse community has become a relatively homogenous one in the wake of ethnic cleansing.\textsuperscript{48}

Srebrenica’s transformation was even more dramatic. According to the 1991 census, 36,600 people lived in the Srebrenica district. Of these, 25,000 were Bosniak Muslims and 8,500 were Serbs. As of 2008, the total population was 10,000, of whom 4,000 were Serb returnees and 2,000 were Serbs displaced from elsewhere in Bosnia. Although about 4,000 displaced Muslims have returned to the area, they live mainly in the surrounding villages, leaving Srebrenica itself an almost entirely Serbian town. Before the war, Serbs made up only a third of the town of Srebrenica.\textsuperscript{49}

Available census data, however, indicate that the two municipalities experienced similar changes in their ethnic composition as a result of the war. In Srebrenica, before the war, Bosniaks made up three-quarters of the municipality; after the war, they made up only a third. In Prijedor, Bosniaks made up almost 44 percent of the population; after the war, they constituted only 16 percent. So, in both places, Bosniaks’ minority status deepened. In Srebrenica, Bosniaks went from being a majority to becoming a minority; after the war, the Bosniak presence in Srebrenica was only 43 percent of what it had been before the war. In Prijedor, from a sizable
minority almost equal in size to the Serb population, Bosniaks became a small minority: after the war, the Bosniak presence in the population of Prijedor was only 36 percent of what it had been before the war.

Population growth rates before the war were considerably higher in Srebrenica than in Prijedor (13.2 percent versus 6.1 percent).\(^1\) This can be attributed to the fact that there was a larger urban population in Prijedor than in Srebrenica, because natural growth rates in urban areas tend to be lower than in rural communities. Prewar economic conditions in the two municipalities were remarkably similar, with a per capita income of 4,857 dinars in Prijedor and 4,460 dinars in Srebrenica.\(^2\) The differences in natural resources and potential for economic development between Prijedor and Srebrenica are also not great enough to explain the dramatic gap in refugee returns.\(^3\)

3.4. Alternative Explanation 3: Intensity of Nationalism

I now turn to the political and ideological differences between the two municipalities and whether they can explain different patterns of refugee returns in Prijedor and Srebrenica.

Before the war, communist Yugoslavia did not organize competitive multiparty elections; thus, unfortunately, we cannot use electoral data to compare the intensity of nationalism in each case. Note, however, that in Bosnia there were two cleavages: religion (Christian Orthodox, Catholic, and Muslim) and ethnicity (Serb, Croat, and Bosniak). One can interpret the extent to which these cleavages were cross-cutting rather than overlapping as an indication of the intensity of nationalism. The strength of the nationalism that developed over the course of the war forced these qualitatively distinct cleavages to overlap and the distinctions to sharpen. We can use prewar census data to examine whether the overlap of ethnic and religious cleavages in Prijedor and Srebrenica before the war was markedly different from the present situation, which would indicate a difference in the potential for outbreaks of nationalism.

Before the war, 43 percent of Prijedor’s population self-identified as Muslim and 39.38 percent claimed to speak Bosnian, while 40.5 percent identified as Orthodox and 26.36 percent claimed
to speak Serbian. In Srebrenica, 75.5 percent identified as Muslim and 72.89 percent claimed to speak Bosnian, while 22.56 percent identified as Orthodox and 19.63 percent claimed to speak Serbian. These numbers suggest that, in both municipalities, self-reported linguistic identities only roughly reflected religious identities. There is therefore little reason to suspect that the pre-existing ethnic cleavage structure predisposed Srebrenica to have a greater potential for ethnic violence than Prijedor.

3.5. Alternative Explanation 4: Magnitude and Timing of Atrocities

The “Bosnian Book of Dead” assessed by the Households in Conflicts Network puts the total number of documented deaths that occurred in Srebrenica in 1992–1995 at 9,377 and the number for Prijedor at less than half of that, 4,792; yet, in the overall ranking of war victims by municipality, Prijedor and Srebrenica rank third and second, respectively. Only Sarajevo, the capital, suffered more casualties. Furthermore, a comparison of victims by municipality of origin makes the difference in population losses between the two municipalities much smaller, with Srebrenica at 7,591 and Prijedor at 5,285, again with both municipalities occupying second and third rank in the total number of deaths. When considered in conjunction with the two earlier figures, this suggests that victims from Prijedor perished beyond the borders of the municipality, while victims from outside Srebrenica were transported to that municipality to die.

Direct comparisons of population losses across the two municipalities are complicated by the fact that concentration camps in Prijedor were discovered three years before the Srebrenica massacre started. This suggests that some refugees may have been fleeing Srebrenica while others were already returning to Prijedor. Thus, comparing the population losses in the two municipalities at the same point in time would ignore the difference in the timing of the genocide and the fact that Bosniaks from all over the area came to Srebrenica to meet their deaths.

The tale of these two cities has left us with an unresolved puzzle: it is not clear whether the difference in minority refugee returns to the Prijedor and Srebrenica municipalities (above average in Prijedor and below average in Srebrenica, as shown in Figure
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11.1) should be more strongly attributed to the difference in the magnitude of atrocities than to the different prosecutorial strategies employed in the two places. A comparison limited to just two cases cannot serve as evidence that a prosecutorial strategy that concentrates on order-takers better contributes to reconciliation than one that focuses on high-ranking officials. To draw more definitive conclusions, we need to extend our analysis beyond the comparison of two illustrative cases; we need to expand the universe of cases to more municipalities in the state of Bosnia and Herzegovina. In the next section, my central hypothesis is tested against alternative explanations (ethnic composition, war suffering, economic conditions, intensity of nationalism, and magnitude of suffering) with data from a ten-year period across all municipalities in Bosnia and Herzegovina. This analysis shows that the magnitude of atrocities measured by the numbers of killed and missing does not have an independent effect on minority refugee returns, controlling for effects of prosecutorial strategies. In contrast to what we would expect to find on the basis of the Prijedor and Srebrenica case studies, however, plea bargaining has a positive, not negative, effect on minority refugee returns. In the discussion of the results, I attribute the significance of plea bargaining to the truth-revealing feature of this mechanism.

4. REFUGEE RETURNS BEYOND PRIJEDOR AND SREBRENICA

So far, I have used the Prijedor and Srebrenica studies to discuss certain explanations for different patterns of refugee returns. While some of these explanations could be refuted by using the two cases of Prijedor and Srebrenica, others—such as the magnitude of suffering—require a broader set of cases to be tested. In this section, I build on these two cases and adopt a more systematic approach to analyzing the connection between the prosecution strategies of the ICTY and the readiness of refugees to return home.

In order to rigorously test whether the intuitive relationships suggested by the Prijedor and Srebrenica cases hold more broadly, I have collected data on all municipalities in Bosnia over the twelve-year period following the Dayton Accords that ended the war. I evaluate this data using multivariate statistical analysis. Appendix
11.1 contains the technical details of the statistical model and the operationalization of the dependent and independent variables. It presents the results and explains the tests I conducted to ensure the results’ robustness. The following section informally describes the data I used to operationalize the prosecutorial strategy and presents the findings.

4.1. Operationalization of Dependent and Independent Variables

This section explains the empirical analysis I conducted to obtain the results of this study. It discusses the data, the operationalization of the variables, and the results of the multivariate analysis. The data for the dependent variable, returns, comes from the UNHCR. Specifically, the UNHCR has tracked all Bosniak, Croat, and Serb minority returns at the level of municipalities in Bosnia and Herzegovina, Republika Srpska, and the Brcko district.

The main independent variables, representing the ICTY’s prosecutorial strategy, have been coded by extracting key information from indictments, transcripts, and ICTY decisions between 1994 and 2006. I coded variables from three stages of the trial: the indictment stage, the trial stage, and the sentencing process.

The indictment stage contains (1) the number of indicted persons; (2) the number of counts on which each defendant was indicted; (3) the counts of crimes against humanity; and (4) the counts of crimes of genocide on which they were indicted. The dataset includes amended indictments and amended sentencing through appeals, if any. The trial stage includes information about (1) the initiation of the trial; (2) the number of defendants; (3) whether or not plea bargaining took place; and (4) the number of witnesses who testified for the prosecution and for the defense. The sentencing stage includes data on (1) the number of years of imprisonment to which the defendants were sentenced and (2) the number of defendants. Notice that the data on the number of indicted persons, counts, counts of genocide, and counts of crimes against humanity can be used to signify differences between low- and high-ranking perpetrators: where the ICTY focused on low-rank perpetrators in order to reconstruct the chain of command, the number of prosecuted perpetrators is high, while the number of counts, particularly counts of genocide and crimes against...
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humanity, is low. On the other hand, where the ICTY focused on a few medium-ranking perpetrators to get as quickly as possible to the high-ranking perpetrators, there are fewer defendants. Municipalities for which this prosecutorial strategy was adopted are also characterized by large numbers of counts, plea bargaining, and long sentences.

The complete dataset is a cross-section time series of 136 municipalities with considerably fewer time periods (only ten) than municipalities. The unit of analysis is a municipality in a given year. A row in the dataset is a municipality-year. The columns include the following data:

1. Three dependent variables—minority refugee returns: how many Bosniak, Croat, or Serb minority refugee returns were recorded in a given year in a given municipality?
2. Five independent variables of interest that operationalize the ICTY’s prosecutorial strategy in a given year for a given municipality:
   (a) How many indictments were issued?
   (b) How many counts were included in the indictments?
   (c) How many defendants were put on trial?
   (d) How many years of sentencing were pronounced?
   (e) How many witnesses were called in cases against suspected war criminals?
3. Data operationalizing alternative explanations for refugee returns:
   (a) Economic development and unemployment rate
   (b) Size of the ethnic group of the returnees
   (c) War suffering and population growth rate
   (d) Postwar nationalism

A brief explanation of how these variables operationalize factors that could affect the return rates of minority refugees follows.

Economic Development and Unemployment Rate
A plausible variable for predicting minority refugee returns is the economic differential between the place from which refugees are coming and the place to which they are returning. Unfortunately, the UNHCR did not collect data on returning refugees’
points of origin. When this research was conducted, the Bosnian statistical office did not have detailed data on economic growth at the municipality level either. I was able, however, to obtain data on unemployment for most of the time periods and municipalities under consideration.

Size of the Ethnic Group of the Returnees
The size of the ethnic group of a returning minority group relative to the other ethnicities residing in the municipality is an important factor for refugees deciding to return home. Returning refugees should be more likely to return if they know they will be part of a larger, rather than smaller, ethnic minority. Thus, the regression includes a set of independent variables that measure the size of each ethnic group for each municipality. I obtained these census data from the State Statistical Office of Bosnia and Herzegovina.

War Suffering and Population Growth Rate
We would expect minority refugees who experienced considerable suffering before they fled to be, all things being equal, less likely to return to their homes than refugees who experienced relatively little suffering. War suffering is one of the competing explanations for patterns in minority refugee returns that we were not able to refute with the tale of two cities, which is why it is particularly important to include this variable in the multivariate analysis. The “Bosnian Book of Dead” database contains municipality-level data about war casualties, but these data provide only an aggregate figure for the 1992–1995 war years for each municipality. Our cross-country time series dataset, however, requires a distinct figure for each of the ten years (from 1996 to 2006) following the war, because these are the years for which we have data on returning minority refugees. In other words, because we need a figure that changes between 1996 and 2006, we cannot use as a measure of war suffering a constant of deaths that occurred during the war in 1992–1995 in each municipality. Thus, we need some measure of relative deprivation resulting from the war for each municipality that changes over time, one per year for each of the ten years following the war. Although the Correlates of War (CoW) project provides direct measures for assessing the consequences of war for
the entire state of Bosnia and Herzegovina, it does not give us cross-sectional figures that vary by municipality. Thus, the “Bosnian Book of Dead” offers a measure of war suffering that varies across cases but not over time, while the CoW project offers data that varies over time but not across cases. We need a variable that addresses both types of variation simultaneously. For this reason, I have decided to use population growth rate as a proxy for capturing the factors associated with war destruction.

Nationalism

Finally, a nationalistic political climate may discourage minorities from returning home. In the aftermath of war, this can be measured with electoral behavior. One would expect minority refugees to return more willingly to municipalities in which cosmopolitan rather than nationalistic parties win elections. I have coded votes in general and municipal elections for eight main political parties that are classified and ordered on a scale from most cosmopolitan to most nationalistic, using Kenneth Benoit and Michael Laver’s Party Policy in Modern Democracies expert survey. The survey asks experts to place parties on a scale from 1 to 20, with 1 representing “Strongly promotes a cosmopolitan rather than a Bosniak/Serbian national consciousness” and 20 representing “Strongly promotes a Bosniak/Serbian national rather than cosmopolitan consciousness.” I operationalized the nationalism of a municipality as the percentage of votes for parties that were more nationalistic on this scale than average. I obtained data from general and municipal elections from the Electoral Commission.

The main hypotheses I tested were as follows:

**Hypothesis 1:** Refugees are less likely to return to areas where war crimes were committed but the guilty have not been held accountable by the ICTY.

The alternative explanations are represented by the following hypotheses:

**Hypothesis 2:** Refugees are less likely to return to areas that are economically underdeveloped.

**Hypothesis 3:** Refugees are less likely to return to areas where they would be in a small minority.
Hypothesis 4: Refugees are less likely to return to areas that suffered intensive destruction during the war.

Hypothesis 5: Refugees are less likely to return to areas where nationalistic parties win elections.

4.2. Why Do They Return?

In the results reported in the tables of Appendix 11.1, the variable that has the greatest predictive power is the number of guilty pleas. Although “counts pleaded guilty” reduces returns, “defendants pleading guilty” increases the return of refugees. Importantly, the absolute effect of defendants pleading guilty is greater than the effect of the number of counts to which the defendant has pleaded guilty. Including two independent variables to describe guilty pleas (the number of counts pleaded guilty and defendants pleading guilty) allows us to conceptually separate two types of defendants (those who issued orders and those who followed orders). Note that for any fixed number of counts pleaded guilty, the smaller the number of defendants who pleaded guilty, the higher the profile of their crimes (order-givers were charged with more counts). A negative sign on counts pleaded guilty combined with a positive sign on defendants pleading guilty suggests that the ICTY’s transitional justice is producing effects in the form of refugee returns not through harsh sentencing in high-profile convictions but rather by cutting deals with perpetrators who were responsible for following orders. Furthermore, obtaining guilty pleas from lower-rank perpetrators (with fewer counts to plead) increases refugee returns more than procuring pleas from high-rank perpetrators. Guilty pleas involve revealing information about the wrongdoing of other perpetrators. Perpetrators who plead guilty offer truth about the character of the war crimes in which they were involved. In order to induce such pleas, however, testifying perpetrators must receive reduced sentences, as Drazen Erdemovic did. Guilty pleas may seem to undermine justice, interpreted in the most legalistic sense; however, information provided by pleading perpetrators leads to new indictments. Guilty pleas do contribute to justice, in the sense evoked in this chapter: the confessions of perpetrators who disclose full information about the nature of their crime as part of the plea bargain increase refugee returns.
The findings of this chapter are surprising in that they undermine the intuitive relationship between prosecutorial strategy and refugee returns suggested by the Prijedor and Srebrenica cases. In Srebrenica, plea bargaining led to fewer refugee returns. The Prijedor case showed that the prosecution of many low-ranking perpetrators resulted in larger numbers of refugee returns.

Statistical analysis of a larger dataset involving another 134 municipalities revealed that our initial hypothesis is not universally valid. On the contrary, plea bargaining turns out to have a positive impact on reconciliation, operationalized as refugee returns. This finding holds even after we control for other competing explanations: economic development, war suffering, the intensity of nationalism, and the size of the returning minority relative to the two remaining ethnicities. I have also included in the multivariate analysis variables that operationalize these competing explanations for refugee returns (see the tabulated results in Appendix 11.1).

Neither wartime suffering (operationalized through measures of demographic growth or decline) nor the intensity of nationalism (operationalized as voting for nationalistic rather than cosmopolitan parties) nor even economic development (operationalized as unemployment) had a significant influence on returns. The prevailing finding is that, contrary to what the Prijedor and Srebrenica examples suggest, it is not the sheer volume of ICTY prosecutions but the extent of plea bargaining that induces refugee returns. But why does plea bargaining contribute to reconciliation in the aftermath of a civil war? It may well be that the revelations of truth by order-givers pleading guilty are what victims want more than seeing order-takers prosecuted.

The ICTY has always been reluctant to embrace plea bargaining as part of its general prosecutorial policy. It has also been very explicit about the priority it gives to reaching high-ranking perpetrators and its readiness to bypass prosecuting low- and medium-ranking perpetrators unless their trials are instrumental to reaching the order-givers. Recall Prijedor’s perpetrator, Dusko Tadic, the ICTY’s first defendant, who was identified by a random victim. Of his indictment, Cherif Bassiouni observed, “He [Tadic] was a nothing.” The Chief ICTY Prosecutor, Richard Goldstone, was so severely criticized for initiating the Tribunal’s work with the indictment of such a low-ranking perpetrator that he had to
publicly explain that the prosecutorial strategy was to build effective cases against military and civilian leaders. He also admitted that the tribunal’s success would have to be judged by the degree to which the most guilty were adequately punished. Since Tadic was not among the high-level perpetrators, Goldstone admitted that “If in two years time Tadic is all we have to show, then clearly we have failed.”

Implicit in these comments is the fact that the ICTY had no reason to prosecute more low-ranking perpetrators than was necessary to determine the chain of command leading to medium-ranking perpetrators. After the proceedings had reached the level of medium-ranking perpetrators and the bottom part of the chain of command had been revealed to the ICTY, it had no further need to prosecute low-rank perpetrators. The numbers that had been prosecuted were sufficient to reveal the chain of command leading to the top order-givers. Bringing about reconciliation through truth (revealed in plea bargaining) as opposed to justice (heavy sentencing) was an unintended consequence of the ICTY’s strategy. Truth revelation was included in the ICTY’s prosecutorial strategy for only as long as it could be reconciled with the ICTY’s ultimate goal, that is, prosecuting the highest-ranking perpetrators.

5. Conclusion

Plea bargaining leads neither to pure truth nor to pure justice. It is a by-product of a justice procedure that is ostensibly developed to reach high-ranking perpetrators. International war crimes tribunals can reach high-rank perpetrators effectively when they permit the occurrence of plea bargaining. The value of plea bargaining in producing truth is underappreciated by the international community engaged in prosecuting war crimes.

Providing an arena for perpetrator confessions has worked in other transitional justice processes, however. In her book Unsettling Accounts, Leigh Payne analyzes confessions of human rights violators in Chile, Argentina, Brazil, and South Africa. She considers in her analysis a variety of motivations for confessions. Some are institutional, as in South Africa, where perpetrators had to publicly disclose before the truth commission the full details of the political
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crimes they had committed in order to apply for amnesty. This had an effect very similar to that of plea bargaining. Payne notes that perpetrators frequently use such incentives to further their self-interested goal of avoiding a tougher sentence, and victims are often disgusted by the comportment of the perpetrators, as well as by the rationalizations and excuses they devise. She notes, however, that, although these confessions should never be treated as distilled accounts of what happened in the past, by putting contentious truths into the public domain, they provoke a response and generate debate about the atrocities of former regimes. Such debates are by nature democratic and foster, on Payne’s account, a climate of reconciliation and democratic consolidation.67

If provoking confessions—much more contentious than the strategies that accompany plea bargaining—induces widespread debates about the past and ultimately leads to reconciliation between formerly warring sides, plea bargaining may certainly have a similar reconciling effect. Reconciliation on the local scale requires that truth be told on the local scale, and plea bargaining can help to serve this function.

Appendix 11.1: Multivariate Data Analysis

Analyzing cross-section time series data calls for deciding whether to use fixed effects (using dummy variables for each time period and each municipality) or random effects (using additional error terms to account for time-specific and municipality-specific errors). It is quite plausible that I have omitted variables that vary across cases but are constant over time (leading to contemporaneous correlation), as well as variables that are common to all cases but vary with time (leading to serial correlation). Thus, wherever Hausman tests made it possible to avoid fixed effects, I used random effects models. In a model not presented here, I also ran OLS models with the same set of variables but with panel corrected standard errors. Neither the coefficient values nor their significance turned out to be considerably different. Table 11.2 contains results from regressing minority refugee returns on the independent variables of interest in a random effects model. There are two models presented in this table. The first model (with coefficients in columns two and standard deviations in column three) includes sizes of


Table 11.2 DV: PERCENTAGE OF MINORITY RETURNS TO MUNICIPALITY/YEAR; N = 200 (MODEL 1), N = 365 (MODEL 2)

<table>
<thead>
<tr>
<th>INDEPENDENT VARIABLE</th>
<th>COEFFICIENT</th>
<th>STD. ERROR</th>
<th>COEFFICIENT</th>
<th>STD. ERROR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosniak population</td>
<td>.505</td>
<td>(.796)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Serb population</td>
<td>10.12**</td>
<td>(1.99)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croat population</td>
<td>.497</td>
<td>(.847)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Years sentenced</td>
<td>-.0508</td>
<td>(.06)</td>
<td>.0564</td>
<td>(.063)</td>
</tr>
<tr>
<td>Number of defendants</td>
<td>2.36**</td>
<td>(.75)</td>
<td>1.97**</td>
<td>(.833)</td>
</tr>
<tr>
<td>Indicted individuals</td>
<td>-.203*</td>
<td>(.123)</td>
<td>-.047</td>
<td>(.114)</td>
</tr>
<tr>
<td>Counts</td>
<td>.039</td>
<td>(.061)</td>
<td>.0102</td>
<td>(.065)</td>
</tr>
<tr>
<td>Crimes against humanity</td>
<td>.0947</td>
<td>(.166)</td>
<td>.0259</td>
<td>(.183)</td>
</tr>
<tr>
<td>Crimes of genocide</td>
<td>-1.456</td>
<td>(.4)</td>
<td>-1.0852**</td>
<td>(.43)</td>
</tr>
<tr>
<td>Counts pleaded guilty</td>
<td>-10.23**</td>
<td>(2.35)</td>
<td>-6.996**</td>
<td>(2.22)</td>
</tr>
<tr>
<td>Defendants pleading guilty</td>
<td>18.12**</td>
<td>(3.35)</td>
<td>13.54**</td>
<td>(3.13)</td>
</tr>
<tr>
<td>Defense witnesses</td>
<td>-.085</td>
<td>(.028)</td>
<td>-.1024**</td>
<td>(.031)</td>
</tr>
<tr>
<td>War suffering</td>
<td>-.001</td>
<td>(.002)</td>
<td>-.0015</td>
<td>(.004)</td>
</tr>
<tr>
<td>Nationalism</td>
<td>.015</td>
<td>(.052)</td>
<td>.0252</td>
<td>(.18)</td>
</tr>
<tr>
<td>Economic development</td>
<td>-.003</td>
<td>(.01)</td>
<td>-1.1627**</td>
<td>(.043)</td>
</tr>
<tr>
<td>constant</td>
<td>-.008</td>
<td>(1.28)</td>
<td>8.807</td>
<td>(3.67)</td>
</tr>
<tr>
<td>within</td>
<td>.092</td>
<td>.338</td>
<td>.3679</td>
<td>2.67</td>
</tr>
<tr>
<td>between</td>
<td>.622</td>
<td>1.45</td>
<td>.0175</td>
<td>1.434</td>
</tr>
<tr>
<td>overall</td>
<td>.27</td>
<td>.051</td>
<td>.0534</td>
<td>.776</td>
</tr>
</tbody>
</table>

the ethnic populations other than the ethnic group of returning minorities. However, since data on relative sizes of ethnic groups were not available for all municipalities, the number of cases was small enough to justify running a separate model with the ethnic group variables dropped. I present these results in columns four and five. In both models, the dependent variable is the percentage of refugee returns in the population of the municipality in a given year. Ethnic minorities in the first model are also measured as the percentage of the population of the municipality in a given year. Variables that are statistically significant at the .05 level are marked with one star; variables significant at the .005 level are marked with two stars.

By far, the largest effect on refugee returns is that of guilty pleas. Each defendant who pleads guilty for crimes committed in
a given municipality contributes to the return of more than eighteen refugees. In the case of perpetrators who have been indicted on multiple counts, that is, for severe crimes, the effect is somewhat reduced (indicated by the negative sign on the significant coefficient on counts pleaded guilty). This is consistent with the theory that the truth from low-rank perpetrators that leads to reconstituting the chain of command contributes to reconciliation more than guilty pleas from high-rank perpetrators.

What about other variables operationalizing the ICTY prosecutorial strategy? These variables do have statistically significant effects, albeit not always in the direction anticipated. Whereas the number of defendants standing trial before the ICTY increases refugee returns, the number of indicted individuals does not (both figures are significant, although the indictment effect stops being significant in the second model). This could be explained by poorly prepared indictments generating too many counts for the prosecution to support with evidence. As a result, perpetrators with excessively long lists of indictments may end up being acquitted. In essence, the baby gets thrown out with the bath water. More realistic or streamlined indictments have proved to be much more effective in contributing to successful convictions. This explains the negative coefficient on counts.

The variable of counts of crimes of genocide decreases refugee returns. In order to account for this, note that the counts of crimes against humanity and crimes of genocide were handed down quite sparingly. Hence, this negative coefficient could be driven by the Srebrenica case alone: crimes of genocide are so egregious that refugees do not want to come back to the places where they were committed. We do observe the opposite pattern in the case of crimes against humanity, which were also rare but with a high concentration of perpetrators from Prijedor—the municipality with unusually high refugee returns (see Figure 11.1).

Note also that in the second model (columns four and five), the effect of unemployment becomes significant, while in the first model (columns two and three), it was not. This can be attributed to the fact that areas with larger Bosniak populations tend to have higher unemployment rates, and, after dropping the Bosniak population variable, unemployment is picking up variation explained in model 1 by the removed variable.
<table>
<thead>
<tr>
<th>Returns</th>
<th>Bosnjaks</th>
<th>SE</th>
<th>Croats</th>
<th>SE</th>
<th>Serbs</th>
<th>SE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosniak/Serb majority</td>
<td>239.8*</td>
<td>136.3</td>
<td>-250.3**</td>
<td>86.16</td>
<td>-31.198</td>
<td>100.5</td>
</tr>
<tr>
<td>Years sentenced</td>
<td>5.538</td>
<td>6.907</td>
<td>-5.134</td>
<td>3.943</td>
<td>-0.733</td>
<td>6.668</td>
</tr>
<tr>
<td>Number of defendants</td>
<td>-90.16</td>
<td>66.79</td>
<td>10.4</td>
<td>40.88</td>
<td>73.19</td>
<td>54.26</td>
</tr>
<tr>
<td>Indicted individuals</td>
<td>-19.64</td>
<td>40.2</td>
<td>28.5*</td>
<td>16.78</td>
<td>25.37</td>
<td>32.4</td>
</tr>
<tr>
<td>Counts</td>
<td>8.373</td>
<td>6.878</td>
<td>2.34</td>
<td>2.927</td>
<td>11.71**</td>
<td>5.347</td>
</tr>
<tr>
<td>Crimes against humanity</td>
<td>-27.26</td>
<td>27.18</td>
<td>-5.46</td>
<td>10.74</td>
<td>-76.99**</td>
<td>20.52</td>
</tr>
<tr>
<td>Crimes of genocide</td>
<td>185.9</td>
<td>58.75</td>
<td>-38.27</td>
<td>24.21</td>
<td>330.99**</td>
<td>50.35</td>
</tr>
<tr>
<td>Guilty pleas (counts)</td>
<td>510.9</td>
<td>160.2</td>
<td>179.3**</td>
<td>83.7</td>
<td>570.1**</td>
<td>193.95</td>
</tr>
<tr>
<td>Guilty pleas (defendants)</td>
<td>-218.9**</td>
<td>74.84</td>
<td>-65.52**</td>
<td>30.5</td>
<td>27.76</td>
<td>56.151</td>
</tr>
<tr>
<td>Defense witnesses</td>
<td>2.517</td>
<td>3.129</td>
<td>1.944</td>
<td>1.46</td>
<td>-3.265</td>
<td>2.505</td>
</tr>
<tr>
<td>Prosecution witnesses</td>
<td>-2.204</td>
<td>1.961</td>
<td>-0.794</td>
<td>.848</td>
<td>2.136</td>
<td>1.432</td>
</tr>
<tr>
<td>constant</td>
<td>229.1**</td>
<td>62.39</td>
<td>305.9**</td>
<td>51.04</td>
<td>225.8**</td>
<td>68.3</td>
</tr>
<tr>
<td>within</td>
<td>.135</td>
<td>599</td>
<td>.07</td>
<td>255.02</td>
<td>0.215</td>
<td>456.3</td>
</tr>
<tr>
<td>between</td>
<td>0</td>
<td>744</td>
<td>0</td>
<td>296.64</td>
<td>0.05</td>
<td>532.3</td>
</tr>
<tr>
<td>overall</td>
<td>.09</td>
<td>.39</td>
<td>.04</td>
<td>.338</td>
<td>0.11</td>
<td>.423</td>
</tr>
</tbody>
</table>
Finally, note that the relative size of the Serb population positively affects returns. One does not find similar effects for the respective sizes of the Bosniak and Croat populations. This may be a result of conflating reactions of different ethnic groups, however. For instance, the size of the Serb population may induce returns of Serb minorities but discourage the return of Bosniaks.68

In order to verify how robust the finding about guilty pleas is, I used a fixed effects model. The dependent variable here is the number of returnees of a given ethnicity to a given municipality in a given year. Table 11.3 contains results from three regressions: one for returning Bosniaks, one for Croats, and one for Serbs. Separate regressions for each of the three ethnic groups allow one of the coefficients (in each regression, I have included an ethnic majority dummy) to account for whether refugees are returning to municipalities with a Serb, a Bosniak, or a Croat majority. Because each ethnicity can return as a minority to a municipality containing two different majorities (for instance, a Bosniak minority to a Croat majority or to a Serb majority), we need use only one dummy variable per ethnicity, with the remaining possible majority as the base category. In the case of Bosniaks, I use Croats as the base category; in the case of Croats, the base category is Bosniaks; in the case of Serbs, I use Croats. Each model includes a complete set of variables measuring the prosecutorial strategy. Fixed effects use considerably more degrees of freedom than random effects. Splitting up total returns by ethnicity further decreased the number of cases. Thus, in order to preserve a sufficient number of cases to run the regression model, I have eliminated from the set of independent variables nationalistic voting, unemployment, and natural increase. The omission does not produce bias in estimation because the fixed effects model already controls for any omitted variables that characterize specific municipalities.

Columns two, four, and six in Table 11.3 contain the coefficients of the regression, while columns three, five, and seven contain their standard errors. Significant coefficients at the .05 level are marked with a star, and coefficients significant at the .005 level are marked with two stars.

There are some significant differences in predicting returns of refugees from different ethnicities,69 however, the persistently significant effect in models 3–5, just as in models 1 and 2, is the
impact of guilty pleas. Counts of guilty pleas significantly increase returns of Serbs and Croats. In the case of Serb returns, the coefficient for defendants pleading guilty is also positive. Although having guilty-pleading defendants reduces returns of Bosniaks and Croats, the coefficient for guilty-pleading defendants is considerably smaller than for guilty plea counts in the case of both ethnicities. Hence, even in the case of Bosniaks and Croats, overall, guilty pleas still contribute to an increase in refugee returns.

**Appendix 11.2**

**ICTY OUTPUT THROUGH THE END OF MARCH 2010**

NOTES

I thank Refik Hodzic, Natasha Kandic, Iavor Rangelov, and Marianna Toma for conversations leading up to this project and Bruce Hemmer, Nathan Pohlman, Sergali Adilbekov, and Alexander Roinesdal for help in compiling the dataset. I thank participants in the 2006 Peace Science Society meeting in Columbus, Ohio, especially Ben Fordham and Pat Regan, Jon Elster, Jim Fearon, Scott Gates, and Gary Bass; participants in the PRIO workshop on Transitional Justice in the Settlement of Civil Conflicts in Bogota, Colombia, including Harris Mylonas, Stathis Kalyvas, and Betsy Paluck; and participants in the Order, Conflict, and Political Violence workshop at Yale University for feedback. I owe special thanks to Erica Frederiksen, Rosemary Nagy, and Melissa Williams for written comments and suggestions on how to revise the paper. Financial support from the Undergraduate Researchers Program at the Political Science Department of Rice University and from the Weatherhead Center for International Affairs and Area Studies at Harvard University is also gratefully acknowledged. All problems and mistakes are my own responsibility.


3. For a discussion of the possible tensions between these goals, see Jon Elster’s essay in this volume.


6. B1, interview with author, July 2005. Information from NGO members interviewed by the author in the summer of 2005 is used throughout
this chapter; to preserve their anonymity, I have coded their identities as follows. The first letter refers to their nationality. Numbers have been assigned chronologically, as they appear in the text.


8. At the time of writing, in March 2010, five cases are currently being reconsidered by the Appeals Chamber. For ICTY output, see Appendix 11.2.


12. I am far from saying that the defendant with whom the prosecution plea bargains receives amnesty, but the perpetrators that the prosecutor, pursuing high-ranking perpetrators, can bypass thanks to the information received in the plea bargaining process translates into de facto amnesty for a lot of low-ranking perpetrators. For a discussion of when amnesty offered in the context of transitional justice is just, see Kent Greenawalt, “Amnesty’s Justice,” in Truth v. Justice, 189–210.


16. Note that the issue here is not whether the human rights violations under prosecution are more or less serious. From the victim’s perspective, local crimes are more egregious than crimes committed by those who issue orders to kill, although international law considers giving orders a more serious crime. Paul Gready refers to the prosecution of neighbor-on-neighbor killings as "embedded justice" and to the limiting of prosecutions to individuals issuing orders as "distanced justice," suggesting that the conviction of order-givers is too "distanced" from locales where the crimes were committed. He then employs the analysis of case studies from South Africa, Rwanda, and Sierra Leone to discuss the normative and practical aspects of both types of justice. See Paul Gready, "Reconceptualising Transitional Justice: Embedded and Distanced Justice," *Conflict, Security and Development* 5, no. 1 (2005): 3–21. I am indebted to Rosemary Nagy for this suggestion.

17. In previous work, I have drawn a comparison between certain types of lustration laws and plea bargaining. Lustration, known also as vetting or screening, refers to the purging of the state administration of members of and collaborators with the prior regime in the aftermath of the transition to democracy. Monika Nalepa, "To Punish the Guilty and Protect the Innocent," *Journal of Theoretical Politics* 20 (2008): 221–45. See also Jon Elster, "Coming to Terms with the Past," *European Journal of Sociology* 39 (1998): 7–48. Sanford Levinson, in a chapter on due process, explicitly compares amnesty granted by truth commissions, such as the South African Truth and Reconciliation Commission (TRC), to the plea bargaining strategy of U.S. courts. He notes that in cases where courts have to deal with large numbers of cases, allowing defendants to opt out of their due process rights (by choosing to plea bargain) may be the only way to ensure that the court system functions efficiently. Levinson, "Trials, Commissions, and Investigating Committees: The Elusive Search for Norms of Due Process," in *Truth v. Justice*, 211–34. Martha Minow, for her part, describes how the trade of amnesty for truth offered to perpetrators by the South African TRC induced General Johan van der Merve, who had authorized the use of firearms against demonstrators in 1992, to testify against two cabinet-level officials who had authorized the violent crackdown. Minow, "The Hope for Healing." 240. Kent Greenawalt in his chapter on the justice of amnesties argues that, even if the granting of amnesty is politically prudent, it does not render the amnesty just. Thomas, Ron, and Paris provide
an instructive example of a politically wise, albeit morally unjust amnesty: Uganda’s refusal to hand Joseph Kony, the former dictator, over to ICC prosecutors: “The Effects of Transitional Justice Mechanisms,” 9–10.

18. Consider, for instance, the theorists who contributed to the volume Truth v. Justice, who understand reconciliation as a secular concept, rather than as the spiritual exchange of apologies and forgiveness. Rajeev Bhargava, for example, takes issue with the claim that forgiveness is morally appropriate and argues that it may not be consistent with the dignity and self-respect of the victim. He argues that truth commissions cannot bear the burden of bringing about forgiveness by individuals and suggests turning to an idea of societal reconciliation instead. Bhargava, “Restoring Decency to Barbaric Societies,” in Rothenberg and Thompson, Truth v. Justice, 51. David Crocker goes even further than Bhargava in saying that to force people to agree about the past and forgive the sins committed against them is morally objectionable. Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” in Rothenberg and Thompson, Truth v. Justice, 103, 108.

Gutmann and Thompson, for their part, claim that too broad an interpretation of reconciliation may go against principles of liberalism, when an entire society is expected to embrace one and the same moral approach to the past. Gutmann and Thompson, “The Moral Foundations of Truth Commissions,” in Rothenberg and Thompson, Truth v. Justice, 22–44. A notable exception to this trend is Daniel Philpott, who claims that religion and reconciliation still enjoy what Max Weber calls an “elective affinity.” Philpott, The Politics of Past Evil: Religion, Reconciliation, and the Dilemmas of Transitional Justice (Notre Dame, IN: University of Notre Dame Press, 2006).


20. Ibid.


25. I use the term “Bosniaks” to refer to Bosnians with a Muslim heritage. Since many or most of them are not actually practicing Muslims, the term is not equivalent to Muslim. It is also worth mentioning—to correct likely imaginings otherwise—that, even though Serb nationalists like to call them “Turks,” Bosniaks are also Slavic and speak Serbo-Croatian and thus generally look and sound the same as Bosnian Serbs, and Bosnian Croats.

that the figures for civilian casualties do not include the genocides of Srebrenica and Zepa, as in 1994 those killed there were still considered missing.

27. Ibid., 186.


32. Ibid.

33. UNHCR Statistics Package, Sarajevo, September 30, 2006, Table 5, data provided to author by Bruce Hemmer.


35. In order to avoid such inspections, they were called centers, as opposed to camps.


40. Karadzic was President of the Bosnian Republika Srpska and head of the Serbian Democratic Party; he was indicted for genocide by the ICTY and removed from office by the Dayton Accords. General Ratko Mladic served as Karadzic’s military chief. Twice indicted for crimes against humanity and genocide, Mladic was arrested in Serbia in May 2011 after years in hiding.
41. The status of Srebrenica was regulated by a special resolution of the UN, in which it demanded that all parties to the conflict in the Republic of Bosnia and Herzegovina treat Srebrenica and its surroundings as a "safe area" free from any armed attack or other hostile act. United Nations Security Council, Resolution 827, S/RES/827, 1993.

42. Olivera Simic refers to this policy using the term "gendercide" and says that "eliminating the male population made procreation with the remaining females easier"; he points out that what makes Bosnian women particularly vulnerable in a wartime environment is that in Muslim society, children are born with their father’s ethnic identity. In addition, "the dominant image of women was based on patriarchal norms." Simic notes also that the women of Srebrenica were "regarded as unworthy without their male protectors and breadwinners. It was perceived that cultural humiliation would follow the women who were punished to live without their men. Indeed, it may be the fact that ironically gender images based on patriarchal norms saved lives of the Srebrenica women." Simic, "What Remains of Srebrenica? Motherhood, Transitional Justice and Yearning for Truth," Journal of International Women’s Studies 10, no. 4 (2009): 224.

43. Note that the increase in returns to Srebrenica after 2002 is largely dependent on support from international agencies, such as the project run by Charlie Powell in Suceska, a peasant hamlet in the Srebrenica municipality. Vulliamy, "Srebrenica Ten Years On," 6.

44. Specifically, Erdemovic testified about his duties as a member of the tenth sabotage unit of the Bosnian Serb army. He had been responsible for the transportation of Bosnian Muslims to military farms, where they were to be killed.

45. Erdemovic’s testimony was critical in the trials of Dragan Obrenovic, Chief of Staff of the Zvornik brigade in Srebrenica; Radoslav Krstic, a general of the brigade; Vidoje Blagojevic, a colonel during the massacre; and Jokic, an engineer who masterminded the transfer of mass graves to secondary graves. The tribunal’s extensive investigation not only focused on the week of the massacre that took place in mid-July 1995 but researched the development of the ethnic cleansing policy, which began in 1992. The investigation was very precise in reconstructing the chain of command and the chronology of the crime. B1, interview with author, July 2005.

46. Many NGO workers in the field attribute these returns not to any activities carried out by the ICTY but to the report published in 2002 by the Srebrenica Commission. This report, produced by a commission appointed by the authorities of Republika Srpska, was remarkably sincere and remorseful in attributing blame to Serb participants in the massacre.

47. Calculated using GIS systems, using Prijedor’s and Srebrenica’s geographical coordinates from Google satellite maps.
50. Population growth rate (PGR) is defined in demographics as the fractional rate at which the number of individuals in a population increases over a unit period of time. Here, the period is equal to a year, and PGR is expressed as the percentage of the number of individuals in the population at the beginning of the year: (end-of-year population – population at the beginning of the year)/population at the beginning of the year.
52. Literally, Srebrenica means “silver mine.” Historically, the municipality’s main sources of revenue were gold, lead, and zinc mines, along with a metal factory.
53. Ibid.
55. Ibid., Table 11. One can report casualties by municipality in two different ways: (1) by assigning the deaths to the municipality where the victim was born or (2) by assigning the death to the municipality where the victim died. Understandably, the latter figure is higher for Srebrenica, as victims were transported to that area to meet their death.
56. The idea of one occurrence of genocide being milder than another strikes one as odd, if not disrespectful; however, it would be inaccurate to say that the sheer amount of suffering in Prijedor and Srebrenica was the same. Perhaps Srebrenica was destroyed in the civil war to the point that refugees were unable to resettle there even if they wanted to.
57. Data for operationalized variables were drawn from several sources; the sources used for each variable are indicated in the body of the text. The entire dataset on which this analysis is based is housed with the author.
59. Referred to in section 3.
60. Note that, although we could have included the same variable for each year for the same municipality, that variable would be perfectly correlated with the variable created by our fixed effect model (explained in the appendix). In other words, our statistical technique does not allow us to use it.
and industrialization to make projections of economic development and compares the projections to the actual postwar levels to create a measure of war destruction. In order to create CoW type measures for particular municipalities, we would need measures of economic growth and industrialization from periods preceding the war, which were not available from the census.

62. I also tried to use the number of births available from the 1991 census in the Bosnian Republic of Yugoslavia and to compare these to the numbers of children enrolled in primary and high schools after the war, which have been recorded by the Statistical Offices of the Federation of Bosnia and Herzegovina and Republika Srbska, but this proxy did not work as well as population growth rate. Although we cannot measure war destruction at the level of municipalities directly, such destruction should be correlated with population growth rates.


65. Hagan, *Justice in the Balkans*, 72. Goldstone had higher hopes when in the winter of 1995, on Hagan’s account, “two senior Serb officers, General Djordje Djukic and Colonel Aleska Krsmanovic, made the wrong turn into Bosnian-controlled territory outside of Sarajevo and were taken into custody by the Bosnian Muslim army. Goldsone hoped that these senior officers could be part of a leadership case of the kind Bassiouni had favored, leading up the chain of command to General Ratko Mladic, whom the tribunal had indicted on charges of genocide.” Ibid., 73.


67. One finds support for this claim more generally in some of the literature on the Truth and Reconciliation Commission. See James Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* (New York: Russell Sage Foundation, 2004). Some authors are skeptical about the TRC’s ability to provoke both sides of the conflict in the same way, however. Rosemary Nagy, for instance, describes the pressure the TRC exerted on victims to forgive their perpetrators, rather than demand retribution: “The legitimacy of anger, and its role in psychological progress, is undermined by the call to turn the other cheek.” Rosemary Nagy, “Reconciliation in Post-Commission South Africa: Thick and Thin Accounts of Solidarity,” *Canadian Journal of Political Science* 35, no. 2 (2002): 333.

68. The next three models, presented in Table 11.3, allow us to parse out the ethnic identities of the returnees.

69. Most notably, Bosniaks are more likely to return to areas with Serb majorities than to areas with Croat majorities. Croats, on the other hand
are less likely to return to areas with Serb majorities than to areas with Bosniak majorities (both effects are significant). This could be explained by the fact that relatively more Bosniaks fled from areas with Serb majorities, while more Croats fled from areas with Bosniak majorities. Whereas this does not necessarily gauge the mechanism we were looking for, it undermines the claim of repatriation skeptics that what gets measured as refugee returns is in fact attempts at colonization. An interesting factor separating Serbs from the two other ethnicities is the significance of crimes against humanity and crimes of genocide. While counts of crimes of genocide increase returns, however, counts of crimes against humanity decrease returns. Notably, the magnitude of the coefficient is much smaller in the case of crimes against humanity. Thus, if the two types of counts often appear in the same indictment, one may be correcting for the other. The positive coefficient is a sad finding, suggesting that the policies of ethnic cleansing may have accomplished the goal of the war criminals: to rid Bosnia of Muslims so that Serbs could settle it.