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Edited by Lavinia Stan and Nadya Nedelsky

Excerpt

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Introduction: Post-Communist Transitional Justice at 25

Nadya Nedelsky and Lavinia Stan

The year 2014 marks the twenty-fifth anniversary of the collapse of the Eastern European communist regimes, after which Eastern Europe attempted to reckon with the many state-sponsored wrongs committed between 1945 and 1989. The region experimented with court trials of former communist decision-makers and other state officials, lustration (the banning or public identification of communist leaders, secret agents, and other compromised persons occupying certain post-communist public positions), access for ordinary citizens to the extensive secret documents compiled on them by the secret political police forces, temporary and permanent history commissions, official apologies and condemnations, restitution of property abusively confiscated from individuals and communities, rewriting history textbooks, rehabilitation of former political prisoners, compensation packages, as well as extensive memorialization projects involving relevant commemorations, monuments, and exhibitions. Most of these programs have been formulated, funded, and completed by domestic state and non-state actors, while a handful were supported by international actors.

We now have a generation's worth of experience with these wrenching processes. This period spans the tumult of the revolutions that brought about the collapse of the communist dictatorship to the consolidation of new democratic regimes with now-adult citizens who don't remember communism and have no direct experience with its repression and oppression. Our volume's thirteen chapters gather, from this remarkable period, key lessons for both theory and practice formulated by experts in the field of transitional justice with intimate knowledge of the region's communist misfortunes and post-communist travails. The purpose of this volume is *not* to present comprehensive summaries of each country's accomplishments and failures in redressing the human rights violations perpetrated by communist state officials – these are

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already available as peer-reviewed articles and book chapters. Instead, the present volume focuses on the most important factors that have shaped the nature, speed, and sequence of transitional justice programs in the region's first twenty-five years after communism.

The volume is divided into four parts, each dedicated to a different overarching but interrelated theme. Part 1 explores the *causes* of transitional justice, Part 2, its *effects*, Part 3, key *challenges*, and Part 4, *neglected actors and factors* in coming to terms with the communist past. This division of focus allows for targeted engagement with key theoretical debates in the broader context of now long-term regional transition. Let us take each in turn.

The three chapters in Part 1 ask why post-communist countries chose their strategies, examining transitional justice's relationship to the host of political goods that the key leaders of these new democracies have had to deliver, the negotiations and calculations factored in electoral politics by formations representing the government and the opposition, as well as the ideological and programmatic concerns that sometimes have convinced politicians to pursue or block reckoning with the past. These relationships are investigated across a number of countries as diverse as Albania, Poland, Croatia, and Serbia, which are sometimes examined in detail on their own or strategically positioned in theoretically fruitful comparative frameworks. Part 1 focuses on selected transitional justice programs, some of which were quintessentially Eastern European like lustration and access to secret archives, while others were imported into the region from other parts of the world after they proved their ability to rectify past wrongs, such as court trials and investigative commissions. The chapters explain why these programs were adopted rather early or rather late after the collapse of the communist regime, why their scope differed considerably from neighbor to neighbor, and why particular processes were sometimes completely abandoned in particular political circumstances.

Part 2 deals with the impact of post-communist transitional justice programs. Its two chapters use different data sets and methods. The first chapter is exclusively quantitative, resting on the Eastern European section of a large database of cases drawn from all continents and a variety of countries in transition. The second chapter combines an opinion poll with qualitative methods and instead of investigating all post-communist countries, as the first chapter does, focuses on developments in one state, the Czech Republic. Both studies seek to examine how lustration (including the public identification of former secret agents), court trials of former communist decision-makers, and retribution programs (including rehabilitation of former political prisoners) have affected post-communist rule of law and respect for human rights. The most important theoretical question this section addresses concerns the

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expected positive relationship between transitional justice and democratization, which underlies most reparation and retribution programs enacted in Eastern Europe.

Part 3 discusses the main challenges that have faced post-communist transitional justice. These chapters deal with four different themes that have emerged in the region as crucially important for any attempt to meaningfully reckon with past human rights violations, but have remained understudied to date: the problem of timing transitional justice programs and the importance of launching early versus late initiatives; the political choices made when new democracies have to address multiple and competing criminal pasts simultaneously; the way countries get inspiration from programs implemented elsewhere in the region through diffusion processes promoted by domestic, regional, and international actors; and the way honest inquiries into recent human rights abuses are impeded by the mythologization of the past for some political purposes. Again, conceptual and methodological plurality allows these chapters, when brought together, to contribute significant theoretical mileage. Two of the chapters included in this part focus on Balkan countries where the communist past has competed for attention from the political elite and the general population with a bloody post-communist revolution (Romania) or a devastating civil war (Serbia and Croatia). The other two chapters adopt a broader view, taking into consideration a number of post-communist countries' experience with transitional justice.

Lastly, Part 4 presents methods of coming to terms with the past that have been underexplored to date by scholars and practitioners working on post-communist Eastern Europe, and in doing so seeks to test the current limits of the definitions of "transitional justice." These understudied methods include history commissions, official commemorations, the changing of names of streets and localities, theatre productions, and unofficial disclosures of names of individuals connected to the communist political police forces. Here too chapters privileging processes unfolding in a particular country (Romania or the former Yugoslavia) are juxtaposed with chapters that survey all, or almost all, known cases registered in the region during the past twenty-five years. Given its case selection, Part 4 breaks new ground by underscoring the importance and numerous benefits, as well as the many shortcomings and possible dangers, of symbolic processes of coming to terms with the past that can be pursued by civil society actors.

This volume makes important contributions to the existing transitional justice literature. By discussing the efforts to reckon with the communist past across a number of Eastern European countries during the first twenty-five years of post-communist democratic transformation, the chapters offer

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welcome broad-based information on the practices, processes, and methods that have been pursued to date. In doing so, they often underscore ways of rectifying past wrongs that have gained little, if any, attention from scholars and practitioners. Beyond this, the volume contributes to the theory of transitional justice by investigating a number of outstanding questions still unanswered satisfactorily (the importance of diffusion or multiple “competing pasts”; the link between transitional justice and rule of law, trust, and respect for human rights; the possible contribution of non-state actors; the challenge of timing reckoning and the perils of ignoring its reconciliatory dimension; the various determinants of reckoning with the past), and by presenting several methods that have remained unstudied to date (vigilante justice, commemorations, as well as theatre productions). Indeed, the volume helps us to understand transitional justice in general and the post-communist politics of memory in particular, by proposing explanations for how some methods of redressing communist wrongs (such as property restitution, court trials, and memorialization) are more popular than others (most notably, radical lustration) in the post-communist context; why transitional justice stagnated or accelerated at different moments of time; whether delayed justice is worth pursuing at all or all reckoning must be conducted relatively early after the regime change; why post-authoritarian governments decide to reckon with some pasts, but not with others, and how they prioritize transitional justice relative to the business of running the country; and how the politics of memory has (or has not) facilitated the broader democratization process.

While many scholarly articles and book chapters have taken up some of these questions, our volume offers a unique contribution because of the breadth of its perspective. First, it brings temporal range, looking at developments in the region over the entirety of the post-communist period, spanning early to very recent developments. This offers a perspective simply unavailable to works written closer to the tumultuous period of revolution and regime transition and studies concerned with particular events taken in isolation. Second, it provides regional range, offering comparisons between country developments over this long period – something beyond the space limitations of the journal articles and individual chapters published to date. Third, the volume offers program range, offering studies focused on neglected ways of reckoning that push us to reconsider the definitional boundaries accepted to date. Last, it does all this with a view to highlighting both the most important and the most neglected factors shaping transitional justice in post-communist Eastern Europe.

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PART I

Determinants of Transitional Justice

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1

Transitional Justice and Political Goods

Brian Grodsky

Twenty-five years after the collapse of communism, the ghosts of yesterday remain very much alive. From Poland to the Balkans, various aspects of transitional justice have become part and parcel of a much broader political discourse touching on everything from political identity to regional integration. As in other parts of the world, in Eastern Europe the process of dealing with the human rights abuses of previous regimes promises to carry on for even longer than those regimes existed in practice. Transitional justice has already proven in the region to be anything but transitional.

This long-term nature of transitional justice and the extent to which it pervades other apparently unrelated policy spheres raise challenges to earlier theoretical work on the determinants of transitional justice policies. Central arguments in the literature focus on factors such as the relative power of new vis-à-vis old elites, the dominance and complicity of old elites' associates in new state structures, the nature of past human rights abuses, and societal fragmentation (for example, along ethnic or class lines). This chapter argues that all of these might help to establish the boundaries within which new elites shape transitional justice policies, but they do not fully account for the policies chosen. Here, I add one more piece to the complicated puzzle, arguing that political elites pursue transitional justice strategically, implementing popular programs only to the extent they do not interfere with the provision of other expected goods and services and pursuing even unpopular programs when they are perceived to facilitate the delivery of these expected goods.

I assess this argument based on media analyses and interviews with elites involved in transitional justice policies in Poland, Serbia, and Croatia.¹ The diversity of experiences during and after communism makes this group of cases a fruitful area to assess broad arguments derived from countries around the world. These cases vary in important ways, in particular with regard to the

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nature and scope of repression, the regime change, and the transitional justice programs on the table. Poland is the quintessential Central European case, where the worst years of repression ended in the 1950s and the communists ultimately negotiated power away to an opposition group (Solidarity). Serbia and Croatia, by contrast, registered multiple periods of repression, the last and most violent one taking place after communism and involving victims regarded by the public as enemies. While calls for, and mechanisms of, transitional justice were almost exclusively domestic in the Polish case, they emanated largely from outside actors in the latter two.

DETERMINING JUSTICE

Since World War II, political elites have struggled with the question of how to redress past human rights violations. For many transitional justice scholars, the decision of how to deal with the past (or not) is a function of the relative power of new political leaders vis-à-vis former leaders of the old regime. From an elite perspective, the path of political transition (negotiation or revolution) can influence the post-transition distribution of political power and, hence, the feasibility of various transitional justice policies. Following Huntington, proponents of this argument believe that where old elites have the power to direct change, they will in the process ensure for themselves amnesty and/or a strong enough hand in the new regime to ensure that transitional justice is weak or non-existent. Where members of the old regime are replaced by revolution, their weakness should result in much more aggressive forms of transitional justice.²

Proponents of the relative power theory, who define power more broadly by taking into account state structures, emphasize the continued presence in key power ministries of actors involved in earlier abuses. This, in turn, depends on the nature of the previous regime. In the South American context, the military is particularly relevant; in Eastern Europe, the police and secret services have received more attention. Their power, as an ostensibly cohesive, armed group, gives these actors the potential means to disrupt the transition; their complicity gives them a motive. Those applying an even broader definition of power, extending it to the level of societal support, argue that new elites avoid justice measures when they might inflame public opinion and increase instability, particularly where significant sectors of society were previously aligned with the old regime. Social structure (ethnic, religious, class) may preclude transitional justice if such policies could antagonize intra-societal relations. The role of memory and temporal as well as qualitative aspects of past abuses might set the parameters of activity. Accordingly, transitional justice is a function of

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relative power, but society – not members of the former regime – determines what is feasible.³

These arguments are heavily focused on what Welsh calls the “weight of the past,” which in Central Europe includes such historical factors as level of communist-era repression (lower after 1956) and mode of transition (typically involving a significant role for the outgoing regime).⁴ Some authors have noted that the most far-reaching lustration policies unfolded precisely in two states where the communist regime rapidly collapsed (Czechoslovakia and East Germany).⁵ Others have contrasted otherwise similar states based on the level of communist-era repression, explaining that those facing more repression or fewer ways to oppose the old regime were inclined to more aggressively deal with the communist regime.⁶ Like most analyses of post-communist transitional justice, some of these studies were focused largely on the single policy of lustration.

Not surprisingly, given the politicization of lustration, most scholars of post-communism also incorporate into their analysis the “politics of the present” – that is, the political setting, such as the political strength of post-communists, and contextual factors, such as fading memories and re-evaluations of the communist period. From this perspective, lustration laws depend on the ability to assemble pro-lustration coalitions in the legislature, sometimes by moderating policies to make them more politically feasible. In this vein, Calhoun claims that the adoption of liberal democratic values by post-communist states results in more lenient (thus more politically acceptable to former communists) lustration.⁷ Others have found that lustration initiatives are more likely to come from those politicians who failed to fight the previous system and set out in the new one to prove their true anticommunist bona fides.⁸ Still others play up the very politicization of transitional justice, portraying it as a contemporary game used by one set of politicians to weaken others.⁹

As the distinction between past and present is a false dichotomy in some contexts, some scholars have adopted a hybrid approach, showing how the two come together in ways that heavily influence transitional justice approaches. In a valuable study, Nalepa argues that new elites sometimes back away from lustration to avoid unearthing skeletons in their own closets (infiltration of communist-era dissident networks).¹⁰ This may explain why in Poland and Hungary, where relatively more from communist-era opposition networks were recruited by the secret police, lustration came later than in the Czech Republic, which had fewer collaborators, meaning that former anticommunists taking power had fewer worries about embarrassing themselves.

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AN INSTITUTIONAL APPROACH

Each of these studies identifies individual pieces of the transitional justice puzzle that, on their own, are important but when taken together become much more powerful. Using these various arguments as building blocks, I apply an institutional lens in which transitional justice policies are a function of both the constraints and opportunities of empowered actors. Many of the preceding arguments represent the former. For instance, powerful old elites can be a threat to aggressive transitional justice, particularly when they have voting power in primary institutions, control the means of violence, or manipulate public opinion in the new system. Similarly, social schisms based on roles in the previous regime can limit available transitional justice policies. This is particularly true when empowered politicians believe they need the support of a constituency with strong views on justice in order to maintain power past the next elections. However, politics are dynamic, and while these variables may set the stage for transitional justice decisions, they do not, I argue, dictate their direction.

I follow the underlying assumption in the literature that most new political elites, those excluded from power under the former system and empowered under the new, democratic one, tend to want to pursue the most aggressive forms of transitional justice possible. I categorize these elites here as “post-oppositionists” – they are the one-time leaders of the opposition movement that preceded democratic breakthrough, who take power in the new democracy. Whether motivated by morality, pragmatism, or vengeance, those who argue for turning the other cheek tend to be outliers. Nevertheless, empowered proponents of transitional justice face various sources of (potentially conflicting) pressure for and against accountability policies, a function of past and present conditions. Moreover, they are much less likely to pursue forms of transitional justice that would ultimately endanger their political survival. At the end of the day, democratic leaders are accountable to constituents who expect government to provide essential goods and services. These political goods include everything from order, security, and civil liberties to anti-inflationary or pro-employment economic policies and international memberships (with their respective security or economic dividends). The provision of these goods, which is a central feature of political viability in a democratic state and features prominently in the good government literature, is critical to understanding how transitional justice plays out.

From a strategic perspective, political leaders concerned primarily with political survival must ensure that transitional justice policies are perceived by their constituents to further, or at a minimum not interfere with, the