∾

Introduction

The imposing, 130-year-old building on the front cover of this book encapsulates all of the facets of transitional and retrospective justice that we aim to cover in this study. The building, located on Gediminas Avenue in the center of Vilnius, has an infamous history of having been the headquarters of terror for two murderous regimes that controlled Lithuania from 1940 to 1991. Both the Nazi Gestapo and the Soviet KGB operated their central command from this building. From here leaders planned their mass crimes of rounding up and deporting hundreds of thousands of Lithuanians, Jews, Poles and other nationalities, either to concentration camps in the Reich or to the Gulag in Siberia. Many have qualified this genocide – in relation to both totalitarian regimes.

Having originally been built as a court house for the Czarist empire, the building naturally had in its basement a prison, where especially pilloried political prisoners were detained. "Detention," of course, was usually a transitory state. During Nazi rule, but especially under the Soviets immediately after the war, prisoners were regularly executed in a special chamber, where bodies could easily be thrown on to trucks for transport to a special mass grave not far outside of Vilnius (Tuskulėnai).

During the 1950s, when the worst of the Stalinist era had passed, but also a 50,000-man Lithuanian partisan movement had been crushed, the Soviets seemed to declare victory with the erection of a huge statue of Lenin in front of the KGB building and the renaming of the entire square in honor of the Soviet leader. The KGB itself settled down to a more conventional mode of surveillance, manipulation and intimidation. The service's network of collaborators grew. So did the number of files on people: young and old, men and women, urban and rural, prominent and humble.

Some three decades went by like this, when all of a sudden the roles began to reverse. Those who had been imprisoned, deported, repressed, subjugated, intimidated all came out to the streets and squares of

1

Lithuania. They came to express their repugnance and rejection of the Soviet regime. And they did so on very special days of the year – June 14, August 23, March 25 – when the pain of their memories was strongest. The victims were beginning to vanquish the perpetrators.

At first, the victims gained "rehabilitation," or what some would see as an almost perverse situation where the Soviet state acknowledged the fact that these people were no longer criminals for having been killed, repressed or deported by a foreign occupying power. Still, the initiative was gratefully received. Victims were given legal status, some property was restituted and eventually a number of compensatory benefits enacted. Yet, the chief perpetrator of all this repression, the KGB, wasn't at all a part of this process. Rather, it was the three democratizing Soviet Baltic governments who were attempting to do some good for their citizens.

Still, on Gediminas Avenue, the KGB's leaders were becoming uneasy. The political winds were changing too rapidly. Their operations were no longer secure. Better to remove the more sensitive files and materials to Omsk, Ulyanovsk or elsewhere in Russia. If the USSR's occupation in the Baltic states were to end, these materials could become important for future Baltic–Soviet relations. Needless to say, some of the files would also simply go up in smoke right there in that famed building.

The dénouement to this gradual turnaround – in the form of the attempted anti-Gorbachev coup – was, of course, relatively unexpected. All the more reason for the KGB to act quickly during those days in August 1991 to make sure it could shut down its operations with maximum advantage in the face of eager commissions appointed by the Baltic governments and parliaments to take over Soviet property. Eventually, the KGB even relinquished its grand headquarters in central Vilnius. It was now up to the Lithuanians to decide what to do with it.

One outcome was to return the building to its old Czarist function, as in 1993 the Vilnius District Court took up residence on the third and fourth floors. However, it seemed only fitting that the basement area, which had served as the Gestapo and KGB prison and hence as a place of death, should be turned into a commemorative site. In October 1992, the Lithuanian Museum of Genocide was opened on several floors of the building to enlighten the public about the terror that had taken place there as well as to explain the broader repression the KGB had wrought in Lithuania. When in 1997 the museum was made a subsection of the Lithuanian Genocide and Resistance Research Center, the Gediminas Avenue building became even more an emblematic part of Lithuania's quest for truth and justice. In the

course of ten years, its function in fulfilling the repressive aims of the KGB
had been completely inverted.

Moreover, in 1994 the building would be put to even more use as a site of
truth and justice when the Resistance Participants Rights Commission was
relocated to the first floor of Gediminas Avenue 40/1. Now victims were
awaited at the building, not only to visit the museum but also to organize
their legal status as "Participants in Armed Resistance," "Independence
Defenders," "Political Prisoners," "Deportees." A staff was set up, whose
main responsibility would be to issue identification cards and social benefit
certifications to more than 80,000 individuals, depending on their eligibility
under nearly forty categories of repressed person's status.

Finally, in the other wing of the building that had been handed over to the
Vilnius District Court, another two dimensions of transitional justice would
play themselves out. In 1992, the Lithuanian parliament passed a law
establishing criminal sanctions for those convicted of involvement in
"genocide." Within three years, the Vilnius District Court would open a
trial against three former Soviet security agents accused of genocide because
of their actions in crushing anti-Soviet partisans in 1945. All three men
would be found guilty. Meanwhile, some years later the Court would be the
site for more contestation, as a number of former agents or informants of
the KGB would challenge accusations leveled by the country's Lustration
Commission that they had once worked with the secret Soviet agency. In a
most poignant manner, many of the most difficult issues of complicity and
collaboration were now being adjudicated in the same rooms once used by
this regime to repress the Lithuanian people.

In these opening pages we have taxed the patience of our reader with a
long overview of repression and justice in Lithuania in order to illustrate
many of the conceptual and theoretical arguments to be presented in this
book. First, it is not a coincidence that Lithuania decided to pack so many
aspects of truth and justice into one building. Indeed, in this book we will
argue that all of the realms of truth and justice are connected and that it is
important to examine them as a whole. This is exemplified not least by an
institution such as the Lithuanian Genocide and Resistance Research
Center, which has been involved in not only organizing remembrance
activities and engaging with former victims of repression, but also in
preparing victim status applications, reviewing lustration convictions and
gathering materials for the successful prosecution of ex-KGB operatives for
nothing less than genocide. In our view, the reason why such activities
sometimes come together – and sometimes do not – relates to politics. We

want to see why this is so. Likewise, we are keen to ask what is the consequence of having constellations of this kind or another? Are there effects on, say, popular satisfaction with democracy, respect for rule of law or social memory more generally? Are societies that take on broad-scale truth and justice policies different from those that do so less?

Whereas previous research into truth and justice issues has generally been limited to single policy domains, we will aim to show that activities in one sphere are often linked to developments in another. And what is more important: politicians and legislators who have to decide on these policies often navigate these terrains simultaneously. We believe that achieving truth and justice in post-authoritarian or post-communist societies is a multidimensional process.[1] Our objective is therefore to open up this complexity with a new set of conceptual and analytical tools, as well as a rigorous application of those tools to the three Baltic states. Our result will be an ability to evaluate each country's *pattern* of truth and justice policy along with providing some indications as to why these patterns differ across these three states and what effects these patterns have on actually "overcoming" the past.

The politics of truth and justice

Taken in broad terms, this book examines the politics of truth and justice in post-communist countries. All of the words selected in this formulation have meaning in terms of delineating our subject matter and showing how we contribute to the study of specific social science phenomena. In relation to how other scholars have treated these issues, our work will reveal itself to be at times wider, at times narrower in scope. At each stage of the explication, however, we will attempt to justify our approach on conceptual and theoretical grounds.

We begin with 'the politics of truth and justice'. This notion denotes for us the struggles waged by political and social actors to influence the role the state plays (a) in setting prevailing truth discourses about a non-democratic past and (b) in passing measures to enact some interpretation of justice in relation to this past. By citing specifically the role of the state, we indicate that we are interested above all in the power of

---

[1] A fact underscored by other recent research such as Olsen et al. (2010a) and Binningsbø et al. (2012), both of which look for combinations of truth and justice measures as opposed to single policies.

government authority to influence these two processes of truth establishment and justice enactment. By this statement we do not wish to deny the increasingly important role played by external, international actors in the field of truth and justice, through international criminal tribunals, truth commissions or other forms of truth establishment and justice enactment in post-conflict societies. This "exogenous" type of transitional justice (Elster 2004) has indeed seen a proliferation of studies over recent years. Likewise, we acknowledge the important role played by civil society not only in instigating domestic policies of redress or punishment but also in liaising with international agencies to bring about the desired results (Boesenecker and Vinjamuri 2011). However, we do believe that it is still the post-conflict or post-dictatorial state that these external truth and justice efforts are aiming at, that is, the "endogenous" truth and justice process. And it depends ultimately on the degree of cooperation of domestic political and social actors whether or not international intervention contributes to truth and justice.

There are certainly many levels on which these two phenomena take place. On the level of direct social relations, for example, individuals might exchange in a one-on-one fashion their understandings about the past and thereby mold a form of interpersonal truth discourse. Likewise, they may see as their own kind of justice measure a decision to shun someone perceived as having been responsible for past repression, or conversely they may accord someone particular respect for their suffering. Furthermore, truth and justice about the past may operate via cultural artifacts that surround us. For instance, material media such as films or books often project a certain understanding of earlier eras as well as send messages about the justice that is due. In noting these other forms of truth and justice formation, we echo the categories of "communicative," "social" and "cultural memory" brought out by Aleida Assmann (2004) and others.

However, our choice here is to focus on the power that the modern state has when engaging in these processes, since this authority can have the greatest impact on other venues of truth and justice creation, and it can often be final in its consequences. By extension, therefore, we are interested in the efforts of political and social actors to influence the ways in which this state power might be exercised. This represents the "politics." We are not focused solely on what measures the state adopts or their success but also on which actors push for which measures and how they wage their struggles. Moreover, such actors can be formal political ones such as parties, prime ministers or presidents. They may also be social actors like social movements or civil society groups. In any

regard, our concern is with how these actors determine the uses of state authority in setting truth discourses about the past and enacting justice measures.

We acknowledge that there is a certain overlap between what we term the politics of truth and justice and what is often referred to as the politics of memory. Yet, we see a danger of analytically blurring these rather distinct political phenomena. The politics of memory remains a rather vague field of study that looks at a wide range of mechanisms and processes by which very different "mnemonic actors," possessing myriad different motives, constraints and opportunities, seek to influence and shape public perceptions of the past and to forge historical memory and shared meaning in society. Such mnemonic actors can be elected leaders and political and civic organizations, but also representatives of various social and professional groups such as journalists, academics (in particular historians), intellectuals and artists, as well as religious leaders. Thus, studies of the politics of memory encompass a conceivably wide range of activities and issues, from measures and policies implemented by the state, to public speeches and commemorative practices that offer interpretations of past events all the way to history education and textbooks, monuments and museum exhibitions. We would therefore claim that while truth and justice measures do to a certain extent contribute to collective perceptions of the past and to the forging of shared historical narratives, their primary and defining purpose remains that they are serving justice to particular individuals or groups who have been defined by legislative Acts as either perpetrators or victims of past wrong.

Taking a more holistic view of transitional justice

The politics of post-communist truth and justice (as we have delimited it) is a field that has expanded almost exponentially over the last two decades. Not only has the range of available empirical case studies grown considerably, but also the causal models for explaining different varieties of this phenomenon have become more refined and overarching. In this book, however, we argue that scholars have lost sight of the proverbial forest through the mass of trees that have been documented. Moreover, we will claim that by taking a moment to map out more accurately the full landscape of truth and justice measures, scholars will be able to grasp more substantively the inter-connections existing between these varieties and across country-cases. Our task of arriving at more purposeful comparative and causal analyses will be bettered if we have a clearer conceptual

framework through which to both distinguish individual measures and outline country patterns.

We begin by arguing that existing studies of post-communist truth and justice processes suffer from three shortcomings. The first involves authors who have predominantly focused on single measures of transitional justice (most prominently lustration policies) and have tried to explain their variation in the region by identifying the determinants for the adoption or rejection of specific lustration mechanisms (Moran 1994; Welsh 1994; Nedelsky 2004; Williams et al. 2005; Nalepa 2010; David 2011). Yet the models developed in this vein have usually not been transferred (nor are they always transferable) to other areas of justice such as the criminal prosecution of past wrongdoers or restitution policies targeted at victims of past injustice. Hence, while these works have a clear causal research ambition, the dependent variable as such is relatively narrow, and therefore these studies say little about other justice types or the way in which a society might have to deal interactively with many justice forms at once. Moreover, what if, say, high levels of lustration in a country were actually being driven by a broader-scale pattern of crusading across all fields of truth and justice? What would the causal explanation then be? In our view, studies of single phenomena related to post-communist truth and justice are easily susceptible to Galton's problem, where inferences are made without understanding wider, environmental factors that may be actually instigating the process.

The second (to our mind incomplete) approach concerns those authors who have, indeed, sought to capture a more diversified range of truth and justice measures, and yet have failed to provide a comprehensive and truly typological model that might enable further comparative causal analysis (McAdams 2001; Calhoun 2004; Appel 2005; Offe and Poppe 2005; Stan 2009c, 2013). While these works do make an effort to differentiate between certain justice measures, they do not go very far in laying out a full analytical framework. Either they leave their inventory as a taxonomical roster or they fail to test their model with a rigorous empirical case.

Lastly, what we believe is entirely missing in the literature is a solid incorporation of temporality into the analysis of truth and justice processes. Moreover, by temporality we mean three separate time perspectives. If we take as our Archimedean point the moment of a society's transition to democracy (i.e. the removal of the non-democratic rulers and the instauration of democratic leaders), the first temporality relates to what most scholars know as "transitional justice" or efforts to deal with the repression and wrongdoing carried out by the regime that has

just been toppled from power. A second temporal dimension arises when the previous regime lasted for many decades, and truth and justice issues emerge with regard to its early wrongdoings. Here the challenges of achieving truth and justice are different in that few victims, eyewitnesses or perpetrators may be left in society, and documentation is hard to obtain. At the same time, these more historical wrongs are still part of a new democracy's task of dealing with its antecedent regime. The adjudication and redress of such wrongs can give rise to real politics and affect the new democracy's political development. We believe that this perspective deserves to be treated in its own right, with the name "retrospective justice."[2] Thirdly, a number of scholars have already observed how truth and justice processes can emerge or intensify long after a democratic transition is over (Elster 2004; Horne 2009b). Here the temporality shifts to a later starting point, but still reverts back to the moment of democratic transition and asks whether enough has been done to overcome the legacies of the previous regime. In conceptualizing this time perspective, we follow scholars who have spoken of "post-transitional justice" (Collins 2010; Raimundo 2012). However, we will also modify some of their parameters to make the concept more operative.

A final point concerns differentiating these three temporalities. As we will explain further in Chapter 1, transitional and retrospective justice are similar in that they can take place at the same time; they simply look back at either closer or farther moments in the past when alleged injustice was done. Post-transitional justice, by contrast, happens at a later period in time – we argue as of the moment that democratic electoral politics have taken hold – and looks back at what for transitional justice was the present. As a result, post-transitional justice should not be seen as simply a third type of justice, but rather as a phenomenon that might arise as a function of the other two, and indeed, as an essential revision of those earlier decisions.

Previous regime type vis-à-vis truth and justice

Before we outline our book in its entirety, we present a short excursus on the relevance of past regime type for analyzing transitional and retrospective

[2] With this we deliberately distinguish the phenomenon not just from transitional justice, but also from "historical justice," the latter being rather disconnected from post-regime contexts and reaching even farther back in time to "repair historical injustice" such as black slavery, imperial-colonial rule or the suppression of indigenous populations. For a flagship publication in this field, see Berg and Schaefer (2009).

justice. While many recent studies have ventured into bold comparisons of
transitional justice around the globe, encompassing post-authoritarian,
post-conflict and post-communist political regimes (Barahona De Brito
et al. 2001; Elster 2006; Olsen et al. 2010a; Grodsky 2011), our preference
in this regard is to limit the conceptual scope to a single regime type, since in
our opinion the contextual conditions that each regime sets up for latter-day
transitional justice challenges are too varied to provide for meaningful
comparison.[3] To take but the most palpable example, not only have post-
communist regimes had to deal with a seemingly greater range of justice
issues, but they have also had to manage these matters across a broader
spectrum of people (that is, past wrongdoers as well as claimants to rec-
tification). For instance, the Communist regimes that took power during the
1940s in Eastern Europe (but also elsewhere) frequently began their rule
with large-scale property nationalization. This issue has resurfaced as prop-
erty restitution in almost all of the countries since 1989, becoming a major
focus of transitional justice that is less present elsewhere (Offe 1997; Tucker
2006b; Kuti 2009). Likewise, the scale of communist-era repressive acts, such
as forced deportations or the resettlement of entire populations, has been
greater than in many other repressive regimes. These parameters are to our
mind substantive in terms of how we analyze truth and justice processes.

Of course, our objective here is not to argue in favor of post-communist
exceptionalism. It is merely to pick up on the point echoed by other scholars
(Offe 1997; Kuzio 2001) that post-communist regimes have faced a
"simultaneity" of problems involving political, economic, social and some-
times even national identity related challenges. This, we argue, is reflected
also in the range of transitional justice issues confronting these societies.
Likewise, it is possible to maintain that because the past regime's repressive
measures affected a wider section of the population, the political demand
for dealing with these issues will be greater. Individual politicians are more
likely to feel a need to take up these pressures. There are more interest
groups, injustice categories, remembrance moments or other aspects that
will trigger a politics of truth and justice.

The analytical model we propose thus has an interesting methodo-
logical consequence of pleading in favor of more delineated case selec-
tion, primarily because the model makes us more sensitive to all of the
precise processes that may be going on in a certain post-regime category,

---

[3] Recently this preference has also been echoed by other researchers. For example,
Binningsbø et al. (2012) limit their study of the effects of transitional justice measures
to uniquely post-conflict situations and defer including all new democracies.

therefore prompting us to want to control for the effects of these back-ground conditions when selecting our cases.

Outline of the book

In this book we have challenged ourselves with a tricky balancing act. On the one hand, we were motivated to undertake this project because of the paucity of information about the Baltic states that we discovered in the existing literature.[4] Either Estonia, Latvia and Lithuania have been over-looked because they fall out of the mental picture of Central and Eastern Europe, or they have been examined on the basis of very limited and inadequate sources that have led to superficial assessments being made. Above all, scholars have frequently been tempted to treat the three countries as simply one entity. Somehow being able to reduce them to a single category – "the Baltics" – often seems easier that treating them as separate cases (something that people from the "Balkans" and the "Caucasus" can probably relate to). Of course, the Balts themselves are partly to blame here: efforts to portray the unity of the three states either during their common struggle for re-independence from the Soviet Union or as a regional bloc thereafter logically prompt observers to perceive Estonia, Latvia and Lithuania as uniform societies and polities. However, as our empirical analysis will show, there are very tangible differences in the politics of truth and justice that have emerged in these three states. These dovetail with many other divergences that have already been observed in terms of constitutional structures (Vaičaitis 2012), party development (Pettai et al. 2010), economic devel-opment (Norkus 2012; Kattel and Raudla 2013) and minority policy (Vihalemm 2011).

Yet alongside the need to fill this empirical gap, we have increasingly been drawn to making a statement also on theoretical grounds. The way in which the Gediminas Avenue building in Vilnius exemplifies for us the need to think in a more holistic conceptual manner illustrates how

---

[4] Only in the course of the last five years have certain comprehensive case studies emerged. See first and foremost the reports contracted by the European Commission as part of the project "How the Memory of Crimes Committed by Totalitarian Regimes in Europe Is Dealt with in the Member States" (Balkelis and Davoliūtė 2009; Pettai and Onken 2009; Plakans 2009). Subsequently, the 2013 *Encyclopedia of Transitional Justice* features entries about all three countries (Budryte 2013a; Pettai 2013a; Wezel 2013). And separate overview articles on Estonia and Latvia have appeared from Tamm (2013) and Švarca (2012). However, none of these works has attempted to put forth a synthesized analytical model.