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978-1-107-06556-7 - Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience

Edited by Lavinia Stan and Nadya Nedelsky

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POST-COMMUNIST TRANSITIONAL JUSTICE

Taking stock of the twenty-fifth anniversary of the collapse of the communist regimes of Central and Eastern Europe, this volume explores the ways these societies have grappled with the serious human rights violations of past regimes. It focuses on the most important factors that have shaped the nature, speed, and sequence of transitional justice programs in the period spanning the tumultuous revolutions that brought about the collapse of the communist dictatorships and the consolidation of new democratic regimes. Contributors explain why leaders made certain choices, discuss the challenges they faced, and explore the role of under studied actors and grassroots strategies. Written by recognized experts with an unparalleled grasp of the region's communist and post-communist reality, this volume addresses far-reaching reckoning, redress, and retribution policy choices. It is an engaging and carefully crafted volume, and it covers a wide variety of cases and discusses key transitional justice theories using both qualitative and quantitative research methods.

Lavinia Stan is Associate Professor in the department of political science at St. Francis Xavier University, Canada. She is an associate editor of the peer-reviewed *Women's Studies International Forum* and, most recently, the coauthor or coeditor of *Transitional Justice in Post-Communist Romania* (2013); *Church, State and Democracy in the Expanding Europe* (with Lucian Turcescu, 2011); and the three-volume *Encyclopedia of Transitional Justice* (with Nadya Nedelsky, 2013). Stan is also the author of more than fifty peer-reviewed articles published in such venues as the *European Political Science Journal*, *Problems of Post-Communism*, *Communist and Post-Communist Politics*, and *Europe-Asia Studies*.

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LESSONS FROM TWENTY-FIVE YEARS OF
EXPERIENCE

EDITED BY

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Foreword

Constantin Goscmler

Twenty-five years of experience with post-communist transitional justice: congratulations! But what is this silver jubilee about? First, of course, it is related to the fall of communism in Eastern Europe. At the same time, the jubilee reflects the continued rise of transitional justice both as a concept in political science and as political practice. Looking back to the starting point of these two closely intertwined processes in Central and Eastern Europe, we are forced to consider the importance of the circumstances that marked that departure, which might be described as the “spirit of 1989.” At the time, all over the world, from Latin America to Eastern Europe, dictatorship seemed to be on the retreat, and the combination of liberal democracy and market economy appeared to be the unrivaled winner of the Cold War and a model for the future. This mood was most prominently manifested in Francis Fukuyama’s *The End of History and the Last Man*, published in 1992. There, the political scientist – walking in the footsteps of German philosopher Georg Wilhelm Friedrich Hegel (1770–1831) and Russian-born French philosopher Alexandre Kojève (1902–1968) – argued that “liberal democracy may constitute the ‘end point of mankind’s ideological evolution’ and the ‘final form of human government,’ and as such constituted the ‘end of history.’”¹ From such a perspective, transitional justice readily appeared as an instrument of the *Weltgeist* and consequently was taken as the ultimate toolbox for replacing totalitarian dictatorship with liberal democracy.

We need to recall this optimism because in the meantime the celebratory mood that characterized the early post-Cold War period has given way to a veritable hangover. True, historians are happy that history has not ended, but the combination of liberal democracy and liberal market has lost much of its charisma. During the same period, transitional justice has become both a globally accepted model and a highly contested issue. The volume at hand offers an outstanding contribution to this ongoing academic and political

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debate by delivering numerous answers and raising even more questions, making it exciting reading. Instead of simply making normative claims for desirable political outcomes, the volume offers empirically saturated and theoretically rich case studies that provide many counterintuitive findings and thereby shatter trusted beliefs. Hence, the academic reader and the political practitioner alike will get the best of both worlds from this volume: a clear perspective on the ambivalences and contingencies of transitional justice in post-communist Central and Eastern Europe and an insight on its best and worst practices.

Commendably, the volume at hand is not a compendium of national case studies. The editors have chosen a systematic approach, structuring the volume in four consecutive steps: causes, effects, challenges, and neglected factors and actors of transitional justice in post-communist Eastern Europe. By following this structure, the contributors to the book offer not only astounding discoveries on a wide range of Central and Eastern European cases but also invaluable starting points for widening our perspective on transitional justice challenges in other parts of the world. I highlight only a handful of their most significant contributions.

In 1945, the four Allied powers started a comprehensive denazification and reeducation program in defeated Germany, which since then often has been considered a model for successful transitional justice. When the program was launched, the infamous German international lawyer Carl Schmitt, who had lost his prominent academic position as a result of denazification, criticized the realization of “victor’s justice,” voicing a popular viewpoint. In December 1949, Schmitt caustically commented in his *Glossarium*, alluding to the double standard used for judging crimes: “There exist crimes against and crimes for humanity. Crimes against humanity are committed by Germans. Crimes for humanity are committed against Germans.”² While Carl Schmitt is certainly a problematic witness, he nevertheless addressed a crucial problem of modern political ethics. Although the concept of transitional justice implicitly presupposes a pre-stabilized harmony of power and morality, in reality it always becomes an element of the struggle for power and even a highly useful tool for its execution. The contributors to the present volume are very sensitive to this problem, and several case studies show how transitional justice can be used to delegitimize political opponents and strengthen certain political positions. This dynamic has deeply affected outcomes and perceptions of transitional justice in post-communist Central and Eastern Europe.

Another common problem in the region is that several layers of violent histories come into play, but countries apply transitional justice very selectively. This volume explores the tension between the communist past

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and the Nazi Holocaust, two periods that severely affected Central and Eastern Europe. While “Eastern” attempts to redress the communist past have been confronted with “Western” expectations that the Holocaust should also be addressed in the range of transitional justice programs adopted after 1989, especially in the context of admission into the European Union, the present volume avoids such narrowness.³ The chapters not only carefully take into account the problem of multiple violent and criminal pasts but also offer an expansive view of transitional justice’s timeframe, which they see as ongoing. Hence, for these contributors transitional justice extends long after the dictatorship’s ousting.

Tina Rosenberg’s famous differentiation between “criminal regimes” in Central and Eastern Europe and “regimes of criminals” in Latin America⁴ also points to an important problem affecting post-communist transitional justice. Because in Central and Eastern Europe the lines between victims and perpetrators are so blurred as to lead to “diffused guilt,” transitional justice there has not always been popular with larger segments of the society. Discussing a variety of individual cases, the contributors to the present volume deal with the resulting dilemma: while transitional justice aims at establishing democracy, democracy is not always favorable to and supportive of transitional justice. The new post-communist elites have repeatedly pointed to transitional justice’s unpopularity. Sadly, the Central and Eastern European experience confirms the experience of other regions where victims of bygone dictatorships may not hope for much solidarity within their societies – at least as long as they constitute a minority therein.

This leads to another fundamental dilemma that is astutely analyzed in the present volume. Two of the paramount aims of transitional justice – justice and reconciliation – do not easily go hand in hand. A major catchword of transitional justice is transparency, and its concrete manifestation is lustration, a reckoning program widely implemented in post-communist Central and Eastern Europe. Several case studies included in this volume deal with the relationship between justice and reconciliation. They argue that, despite widespread demands for ousting the once powerful secret police, the opening of the secret files they compiled had many unwanted and unpopular side effects. Chief among these problematic effects has been the unraveling of post-communist societies’ still-fragile social fabric, whose members often remain prone to nostalgia for the lost security of the communist era.

Ultimately, the present volume convincingly makes clear that transitional justice is not a blueprint for democracy, market economy, and happiness. Rather, the contributors explore transitional justice as a complicated process that involves intimate interactions within post-dictatorial societies and among

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diverse international actors, thereby reflecting the tensions between global norms and local practices that often come into play in the field of human rights politics. Instead of proposing and upholding a teleological perspective, the volume shows both successes and failures of transitional justice in post-communist Central and Eastern Europe and offers keen-witted explanations for them. The superb volume at hand will push forward our understanding of transitional justice in many ways. Moreover, it will profoundly affect our general perspective on Central and Eastern European societies after 1989. The volume's analyses are deeply realistic and offer multiple explanations for why transitional justice is not just a highly ambivalent endeavor but also one that is worth pursuing.

NOTES

1. Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press/Macmillan, 1992).
2. Carl Schmitt, entry from December 6, 1949, cited in *Glossarium: Aufzeichnungen der Jahre 1947–1951*, ed. Eberhard von Medem (Berlin: Duncker & Humblot, 1991), 282.
3. John Torpey, *Making Whole What Has Been Smashed: On Reparations Politics* (Cambridge, MA: Harvard University Press, 2006), 52 f.
4. Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts after Communism* (New York: Random House, 1995).