

Conclusion: Some Lessons Learned

Nadya Nedelsky

What can twenty-five long years of experience in Central and Eastern Europe teach us about transitional justice? Through both case studies and broad comparative studies, this volume's authors offer many important lessons. Some are explanatory and some practical; some are hopeful and others deeply cautionary. In this concluding section, I explore some lessons that twine through the analyses, emerging from a variety of contexts and across the volume's three sections. This is by no means a comprehensive list; I identify five. These are: *beware the overly narrow view of elite motivations*, transitional justice actors and methods, goals, timing, and comparative cases. I take each in turn.

To start, the volume indicates that we must beware the overly narrow view of elite motivations with regard to transitional justice. At the volume's outset, Grodsky notes that both scholars and primary actors alike should analyze transitional justice in the context of many other relevant policy issues that governments must consider concurrently in the aftermath of conflict and dictatorship. Looking at Serbia, Croatia, and Poland, he emphasizes that elites must provide constituents some goods to remain in office, and this hard constraint often drives transitional justice decision-making; economic and material considerations play a critical (if not definitive) role. Austin, taking up the Albanian case, argues that there the post-communist elites ignored public opinion and as a result transitional justice became so politicized that it has functioned primarily as intra-elite blackmail. Beattie and Ciobanu, as well, note that elites' self-promoting motives can drive truth commissions and other reckoning processes and practices as much as concern for victims.

At the same time, the volume shows that normative considerations clearly played a determining role in some cases. Looking at Poland, Szczerbiak argues that we should expand our focus beyond narrow political strategy and take seriously elites' ideological orientations and perspectives on historical

memory. Elite positions on transitional justice may also respond to just demands for political renewal in deeply corrupt states. Taking a broader comparative approach, Welsh, as well, observes that ideas and methods flowed across borders and influenced policy, most effectively when values and goals were shared (leading her to emphasize dialogue and assistance over coercion in promoting policies).

Furthermore, diverse elite motivations are important for understanding how common projects like the redevelopment of historical memory may lead to very different methods and outcomes. For example, Ciobanu argues that memory of national victimization was used as a tool by Romanian elites to re-legitimize themselves after a deficient revolution, and Subotic shows that Serb and Croat elites used memory to undergird nationalist mobilization. By contrast, the Polish reconsideration of memory that Szczerbiak considers (described above) prompted what seems to be a renewed serious push for more straightforward transitional justice, including a fresh and more radical in scope lustration law. Likewise, Beattie notes that post-communist truth commissions were motivated not only by elite self-interest, but also other concerns, such as solidifying state legitimacy during highly unstable transitional times. The volume thus makes a very strong case for the need to avoid mono-causal or narrow assumptions regarding elite motivations, as these motivations are usually complex, multi-faceted, and evolving, and as such shape both policy and outcomes in many ways.

A second lesson the volume offers is to avoid a too-narrow view of the region's transitional justice actors and the methods they employed. As Light and Young argue in their multi-country study, scholars have focused largely on what may be considered "hard" aspects of transitional justice, such as lustration, restitution, and truth commissions, and much less on "soft" aspects such as memorialization, which nevertheless provide important venues for both state and non-state actors to redefine memory and history. Even regarding the "hard" methods, intergovernmental organizations, such as the International Criminal Court for the Former Yugoslavia (discussed by Grodsky), NATO, and the European Union (Ciobanu) have not received much attention in analyses of the region, though accession and other pressures have played some role in post-communist developments.

Likely even more important, the volume's analyses suggest, are a number of understudied international, civil society and non-state actors. These include associations such as European Network for Solidarity and Remembrance (Welsh) that have contributed importantly to regional norm and policy diffusion. Domestic actors have been crucial but overlooked as well. As Light and Young argue, state elites cannot claim a monopoly on the development of

memory, and many civil society and private actors have shaped societies' relationship to the past via memorials in public spaces, often in ways that may be more lastingly influential than "hard" transitional justice methods. Simić similarly points to the role of documentary theatre in the Balkans in breaking official/societal silences regarding conflict and human rights abuses. These theatrical productions invite citizens to interact within and across communities and thereby to develop empathy and a more encompassing understanding of loss. Like Light and Young, Simić hopes that such groups could shift perspectives in the longer term, including by educating the young. Finally, Stan points to the importance of certain individuals who shook their societies by unilaterally exposing communist secret police lists of agents and informers. Non-state actors have thus shaped and at times transformed transitional justice. As such, regional developments cannot be understood, and potential future progress envisioned, without them.

A third lesson warns us – and especially policymakers – to beware the overly narrow focus on particular goals. Looking at the Czech case, David discusses the ramifications of an approach that, while comprehensive, sought justice with little concern for reconciliation. As he argues, the former without the latter is troublingly incomplete. By contrast, Subotic explores the implications in Serbia and Croatia of prioritizing national reconciliation over a thorough reckoning with all key periods of a society's dark past. Ciobanu likewise explores the implications of focusing on the wrongs of one past (narrowly conceived) over other "competing" pasts. In both cases, reckoning left gaping and crucial portions of previous periods out and, because it overlooked numerous human rights violations as a result, proved divisive and ethnically and religiously exclusionary. Beattie, as well, notes that a narrow focus on reconciliation can obscure the other potential goods truth commissions can deliver. Looking at five cases of "wild" file disclosures, Stan also warns against the overzealous pursuit of truth and the potential re-victimization of certain individuals. Focus on a particular concern to the exclusion of other related issues can thus be dangerous in a number of ways.

A further policy question where narrowness is a real concern is lustration. In their large comparative study, involving not only formerly communist Europe but also Latin America, Lynch and Marchesi find, counter to the expectations of many studies published to date, that lustration and trials may actually negatively affect political rights and physical integrity rights. What seems to counter this potentially negative relationship is comprehensiveness of lustration – the breadth of its reach and quality of implementation. Austin's case study of the sham lustration in Albania backs up the importance of these elements.

A fourth lesson concerns an overly narrow view of timing. Based on her large comparative study, Horne finds that the timing of lustration matters much less for trust in government and democratization than many expected (a dominant previous view held that there was likely a small early window for such policies). Indeed, somewhat delayed lustration had better outcomes than early policies. That said, Horne finds, along with Lynch and Marchesi, that a far more important factor is the quality of the reforms and policies. Welsh also cautions that trans-national diffusion may start slowly and take some time to have significant effects.

An important corollary to this timing lesson warns against a too-narrow view of reforms without regard to the possible importance of sequencing. Austin, Ciobanu, and Lynch and Marchesi all note that a non-independent or insufficiently vetted judiciary can become a serious impediment to transitional justice measures, since the judiciary must be in the driver's seat for key "hard" transitional justice methods such as court trials and lustration to ever be pursued. This finding leads Lynch and Marchesi to suggest that lustration programs that target the judiciary may lay key groundwork for its potential to support the development of a rights culture via subsequent free and fair trials and further legitimate lustration. Likewise, Horne argues that delayed lustration might be more efficacious because other foundational institutions already exist to properly execute reform measures.

A final lesson the volume offers warns against a too-narrow view of the post-communist region with regard to broader transitional justice issues and questions. Without denying its distinctive features and experiences, Beattie argues that seeing Central and Eastern Europe as overly special or exceptional can obscure commonalities with other cases outside the region. Lynch and Marchesi, as well, call for broader comparative study to test conclusions regarding post-communist lessons, and Horne observes that the region's lessons could be useful for many other cases, including the Middle East, Central America, and Asia.

Indeed, this project was animated by the hope that identifying the hard-learned lessons of post-communist Europe's first twenty-five years may not only contribute to our understanding of that period of history but also lay groundwork for a better future in the region and beyond. The editors are grateful to all the volume's authors for their contribution to these aims as we celebrate this important anniversary.

