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DEALING WITH THE PAST

Post-communist transitional justice

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The politics of post-communist Central and Eastern Europe (CEE) features a number of phenomena that arguably have very clear parameters and straightforward ways of measuring change and progress.[1] Whether it is economic reform, party system consolidation, European Union (EU) accession, voter behaviour, or ethnic relations, political science offers many different analytical tools and benchmarks with which to assess transformation in these various realms.

Transitional justice (TJ) is decidedly not one of those fields. In this chapter we will show how the rubric of 'transitional justice' constitutes a dizzying array of meanings and foci (Bell 2009, Fletcher and Weinstein 2015). Moreover, we will argue that scholars would do well to first map out this range of phenomena before simply selecting a single measure and seeing it as the incarnation of TJ.

A further occupational hazard of TJ research is that it is eminently about how individuals, groups, and whole countries take an explicit, normative stance towards a particular period of the past. Transitional justice is often about dictating the permitted narratives regarding that past, about determining the socialisation of future generations in relation to this past, and about making certain people culpable for the past although this culpability is rarely clear-cut.

It is no wonder, therefore, that TJ lacks a third essential parameter, which is a yardstick for determining when countries have reached an adequate level of transitional justice, sometimes declared as 'reconciliation'. Hence, not only do we not have good measurement tools for our work, but we also have no intrinsic standards for when enough transitional justice has achieved tangible objectives or outcomes. Because the phenomenon of transitional justice concerns such core political issues as legitimacy, accountability, and recognition, it is perhaps impossible to define absolute values or justifiable thresholds of 'justice'. This, however, only exacerbates the ambiguities the field must deal with now and in the future.

We will endeavour to illustrate these claims by presenting an overview of the field that is structured largely along methodological grounds. We echo in this respect the approach taken by Stan and Nedelsky (2015), who organise their work (as we will) around determinants and impacts of transitional justice along with some supplementary phenomena such as temporal waves of TJ policy and memory issues. However, what is missing in their volume is a more rigorous mapping out of what exactly the term 'transitional justice' encompasses. In this sense, our first analytical section aims at conceptualising the field as such in order to fill this gap more meticulously. We will compare how different scholars have conceptualised the notion of transitional justice,

particularly the range of empirical phenomena that authors have decided to encompass when they have dealt with truth and justice issues.

Second, we will show how, depending on an author's empirical delineation of the phenomenon, the independent variables chosen across time or across countries have also varied. This is crucial, since if we as scholars each shoot at different targets (phenomena), it is no wonder that our arrows (methods) will be different, and we end up lamenting the fact that there is no consensus in the field or that we have no universal explanations for what has taken place.

Third, we will turn the methodological equation around and examine those (albeit far fewer) scholars who have examined transitional justice as a causal phenomenon and sought to answer what transitional justice (in whatever form it is conceptualised) actually bring to society. These approaches often pose the most important normative topics, such as whether transitional justice has achieved 'closure', greater rule of law, deeper societal trust, or more consolidated democracy. Here again we face important challenges regarding the conceptualisation and operationalisation of these phenomena. Yet, for obvious reasons these also remain some of the most vital questions surrounding the field.

Lastly, we will present a set of sub-themes in the field of post-communist transitional justice, namely the comparative study of institutions devoted to TJ, the growing importance of international influences on TJ, and the place of specifically post-conflict TJ in the context of former Yugoslavia.

The meaning of 'transitional'

It is widely believed that the first scholar to actively employ the term 'transitional justice' was Neil J. Kritz, who pioneered the concept in the early 1990s in connection with a path-breaking international comparative project on how newly democratising countries were dealing with their repressive past (Kritz 1995, see also Bell 2009). The timing of his scholarly revolution underscores two points about how TJ in CEE has been studied. On the one hand, Kritz and other participants in that project were clearly drawn to the topic by the explosion of justice issues facing the recently freed countries of post-communist Europe. In other words, post-communist Europe has driven an important part of the overall field thanks to its wide-ranging empirical set of cases and the simultaneity with which all of these countries began to engage with their past.

At the same time, much of the study of post-communist transitional justice stands apart from the broader international comparative scene, with few if any scholars venturing outside the conventional area-studies context. To do a comparative study of, say, Bulgaria and Bolivia would seem almost unthinkable, even though 'transitional justice' as a subject designation ostensibly applies to both (exceptions are Kaminski and Nalepa 2006, Curry 2007). Scholars of post-communist transitional justice have rarely sought to speak to the wider field. Instead, the focus has been on understanding the particularities of what seemed to be a separate genus of political processes: dealing with the legacies of repression carried out during totalitarian and/or post-totalitarian regimes as opposed to authoritarian ones.

Needless to say, if we take as important this distinction between political regimes (going back to Linz 1975), then the quiet separation of post-communist transitional justice as a sub-field was entirely warranted in analytical terms (see e.g. Killingsworth 2010). The magnitude of communist-era repression, its infiltration into all aspects of social life through agents and informants, and the much greater degree of ambiguity between perpetrators and victims made the cases of TJ in post-communist Europe somehow distinct from those encountered even in nearby Greece or Spain. Some scholars even aimed to characterise the phenomenon in a particularly contextual manner by speaking of 'decommunization' (Sadurski 2005, Czarnota 2009).

Still, it has taken time to build bridges across regions and phenomena. Some scholars, most prominently Elster (2004: 3), undertook this by extending the analytical focus of transitional justice back in time, not only to recast our understanding of earlier justice moments such as the Nuremberg trials, but also to stretch the lineage as far back as ancient Greece (see also Teitel 2003). Stan and Nedelsky (2013) have also expanded our horizons greatly by editing the first encyclopaedia of TJ that examines measures and institutions of TJ around the globe.

A second ambiguity about how the field has evolved concerns how scholars have semantically understood the word 'transitional' in transitional justice. In his pioneering work, Kritz established much of the conventional interpretation of 'transitional' as representing the political process by which new democratic regimes seek to find a balance between seeking revenge against past rulers and at the same time establishing democratic credibility by adhering to and fostering rule of law. This understanding that transitional justice writ large has something to do with 'coming to terms' with past repression is widespread and largely unproblematic. At the same time, writers like Teitel (2000) have treated 'transitional justice' from a more legal-philosophical perspective, examining how law and justice are thrown into uncertainty during times of political transformation. While Teitel clearly erected a landmark in the field by entitling her treatise *Transitional Justice*, her approach needs to be understood as above all a normative reflection on the meaning of justice amid political change.

Further semantic nuance to the notion of transitional justice has been given by the meaning of transitional that is 'temporary' or intended at some point to come to an end (Rožič and Grodsky 2015: 169). While many policies adopted by governments to deal with past wrongs have indeed been time-delimited, this understanding of TJ as simply an intermediate reform process has ultimately not proven to be true. Many countries have explicitly prolonged TJ measures when their initial mandates had expired. Transitional justice has rarely been seen as something that is confined to the period of democratic consolidation. It has generally been an open-ended political arena, where time and again the past is reignited as an object of contention.[2]

A final perspective on transitional justice has come to the fore only in the last decade or so, as struggles over the past have indeed resurfaced years after the regime change. These examples have led several authors to talk about 'protracted transitional justice' and in particular 'late lustration' (Horne 2009, Szczerbiak 2015). This phenomenon is certainly widespread across CEE, where many political elites have sought to revise previous TJ settlements and to reshape the narratives surrounding the erstwhile democratic transition. The most prominent case discussed in this regard has been Poland, where the first lustration law was adopted as late as 1999 and efforts to revise both it and the narratives of the anti-communist struggle have recurred repeatedly in the 2000s. An analytically more nuanced interpretation of this phenomenon has been put forward by Raimundo (2013) and further developed by Pettai and Pettai (2015), who define these latter-day struggles as 'post-transitional justice'. With this they not only clearly delineate the temporal boundaries of transitional justice as being confined to the immediate regime transition, they also point to the substantive difference between the TJ politics that surrounds transition as opposed to that which develops later.

Conceptualizing transitional justice

Against the backdrop of this terminological multiplicity, it is perhaps no surprise that the empirical content of what scholars have studied under the rubric of transitional justice in the post-communist context has also greatly varied. By far the most frequent object of analysis has been lustration policy or the adoption of laws aimed at either exposing, vetting and screening, or altogether removing current and/or future members of the political elite or state administration

based on individuals' possible prior involvement with repression under the erstwhile regime (Nalepa 2009, 2010, 2012, 2015, David 2011, Appel 2005, Letki 2002, Haughton 2013, Williams et al. 2005, Calhoun 2002). Since practically every country in CEE has considered enacting this kind of legislation at one point or another, the phenomenon has come to dominate much of the discussion surrounding transitional justice.

This predisposition to reduce TJ to a single legal domain is understandable to the extent that policies in this area are often controversial and attract public attention. However, it can also detract from a multitude of other justice issues that may be pursued in post-communist society and that more often than not are happening in parallel with this question about what to do with former members of the security services (Grodsky 2009). Therefore, scholars such as Stan have pursued a more comprehensive approach to the topic by examining multiple truth and justice dimensions and demonstrating interlinkages between them. Beginning with an initial volume covering the entire post-communist space and later producing a separate case-study of Romania, Stan (2009a, 2013) has shown the way in which post-communist societies have often had to grapple with numerous truth and justice issues at once. In her profile of Romania, Stan covers no less than eight different truth and justice domains, including court trials, access to former regime files, lustration policies, property restitution and rehabilitation/compensation for former political prisoners. She also deals with symbolic or mnemonic aspects of truth and justice, including official condemnations of the former communist regime, the rewriting of history textbooks, and various 'unofficial projects' such as the changing of place names or grassroots campaigns to put communism as an ideology on trial. As an overview of topics relating to post-communist transitional justice, Stan's work is a key point of reference. Other comprehensive country studies include Tamm (2013) on Estonia and Kim and Swain (2015) on Hungary.

However, if we are to make progress in explaining the causes and effects of transitional justice, more conceptually driven frameworks are needed. Many scholars have sought to move in this direction by structuring transitional justice along sub-categories. This approach often begins with the classic distinction between measures that are aimed at punishing perpetrators and those that are aimed at helping victims. Tucker (2006a, 2006b), for example, writes in this vein about negative and positive justice (see also Tucker 2015). Meanwhile, David (2012) distinguishes in a review of transitional justice in the Czech Republic between 'retribution, reparation, and revelation' as forms of TJ. And most recently Rožič and Grodsky (2015) survey the field in terms of three sub-categories: retributive justice, administrative justice, and restorative/reparatory justice. The first area examines criminal cases or legal proceedings brought against leaders or operatives of the communist regimes; the second encompasses not only lustration, but also more symbolic measures such as opening former security files to the public and allowing everyone to see who was in them; and the third turns attention to the victims of repression by profiling policies that deal with rehabilitation, property restitution, apologies, and overall memorialisation. Some of this approach draws on Grodsky's (2011) earlier synthesis of truth and justice measures into a spectrum of policies that politicians can adopt depending on their costliness in terms of political capital. In that one-dimensional model, Grodsky ranked measures as ranging from simply a cessation of human rights abuses (as being lenient) to full-scale prosecution of commanders of repression. Within this scale, one could find measures relating to both victims and perpetrators.

Hence, many of these works have remained relatively taxonomical. A third level of conceptualisation, pioneered by Offe, draws explicitly on typologies and conceptual models. Offe (1992) highlighted very early in the literature that truth and justice measures should be distinguished not only by the perpetrator/victim dimension, but also by the level at which measures are adopted (see also Calhoun 2004). Whereas Offe worked with only two levels of measures, criminal law

and civil law, others have added a third, symbolic level in order to separate out those measures that may be codified in legislative acts, but do not have direct effects on either perpetrators or victims. In this manner, opening up old security files is distinguished from other more retributive forms of lustration, since the former merely shames individuals, while the latter may force them legally to resign or be banned from office. Likewise, within the realm of victim-oriented policies, having a separate category devoted to symbolic measures helps to delineate acts such as commemorative activities or truth commissions from more personalised measures such as compensation schemes or legal rehabilitation.

A genuinely conceptual understanding of transitional justice would therefore look like Table 21.1. All of the different measures generally associated with post-communist TJ can easily be located within this matrix, and in so doing we can begin to compile a more complete picture of the *patterns* of transitional justice that one or another country may have used over the last quarter-century. Pettai and Pettai (2015) illustrate the utility of this framework by comparing Estonia, Latvia, and Lithuania in terms of the justice measures these countries have adopted in relation to both repression during the late Soviet era as well as that which was inflicted during the Stalinist period (something they differentiate as transitional vs. retrospective justice). They find that when looking at composite patterns of transitional justice, we can distinguish between étatist countries, where the state takes the lead in promoting measures across the full range of TJ domains, and inactive countries, where governments leave transitional justice to civil society to deal with or get involved only with temporary measures. Replicating this kind of comprehensive overview of transitional justice in other post-communist countries represents one of the future research trajectories of the field.

The three approaches to TJ conceptualisation outlined in this section admittedly entail certain epistemological choices to be made by any scholar interested in contributing to the field. Those who seek to limit the meaning of transitional justice to just one or two TJ measures (for example, lustration) gain from a high degree of analytical precision and specification, especially if the phenomenon can be reduced to a dichotomous variable (e.g. the presence or absence of a lustration law), which in turn lends itself well to comparative quantitative testing (Letki 2002). However, what is lost in this approach is not only terminological consistency (especially when transitional justice is used as a synonym for lustration), but also a broader appreciation of the complexities of post-communist *Vergangenheitsbewältigung*, or coming to terms with the past. Meanwhile, empirical case studies that cover many TJ measures at once help to advance scholarship, but at the same time can imply an epistemological belief that ultimately each country has its own unique communist legacy to manage, and that over-generalised conceptual frameworks can end up being artificial or distortive of reality. Frameworks that seek to map out full-scale patterns of transitional justice argue in favour of both comprehensiveness and comparison, but require the largest amount of empirical data collection as well as a more intricate aggregation model when summing up precise patterns of TJ in order to be fully effectual.

Table 21.1 An integrated conceptual framework for examining transitional justice

	Perpetrators	*Victims*
criminal–judicial	trials	rehabilitation
political–administrative	purges/vetting	compensation, property restitution
symbolic–representational	voluntary self-reporting	recognition/truth-telling

Source: Pettai and Pettai (2015: 21).

Explaining variation in post-communist transitional justice

Continuing our methodological analysis of post–communist transitional justice, it is again no surprise that where scholars have decided to focus on only one aspect of truth and justice, the explanatory variables that they have put forward to explain variation across countries have not always been the same that more multi-dimensional studies have proffered. Across studies that aim to explain the specific phenomenon of lustration across CEE, explanatory variables have included both structural and actor-based factors (Welsh 1996). Structural determinants begin with the type of communist regime, often drawing on Kitschelt's (1995) famous distinction between national-accommodative, bureaucratic-authoritarian, and patrimonial regimes in the communist world. This distal variable is subsequently linked to the type of democratic transition that eventually took place in the late 1980s, the argument being that bureaucratic-authoritarian regimes were generally more rigid than national-accommodative ones and therefore collapsed more quickly. This, in turn, led to a different *rapport de force* between pro-lustration and anti-lustration groups with former bureaucratic-authoritarian countries (like the Czech Republic) implementing harsher lustration measures, while erstwhile national-accommodative countries (like Poland or Hungary) saw roundtable talks that (at least initially) thwarted the tendency towards harsh measures (and might even have set the stage for a reprise of these issues later).

At the same time, lustration can also be seen as driven by 'present politics' or political calculations made by different actors depending on the degree to which they or their opponents have 'skeletons in their closet'. This approach helps to explain more proximate variations in terms of how individual politicians or political parties have behaved in pushing lustration issues or avoiding them. It can also be very fruitfully modelled using rational choice and game theory (Nalepa 2010). Somewhat in between these structural and individual levels of explanation lie more circumstantial explanations that draw attention simply to the amount of reliable information (e.g. files) available to the democratic regime about individuals' past involvement with the security services. This pertains particularly to some of the post-Soviet cases, where KGB files were removed to secure areas in Russia before the USSR collapsed.

In terms of research design, most explanations for lustration come from qualitative comparative studies, some constructed in explicit Millian terms, others more casually. Among the former is Nedelsky's (2004) structured comparison of the Czech Republic and Slovakia, taking as its point of departure the common political origin of these two countries (Czechoslovakia), yet highlighting the remarkable disparity between the two states' lustration policies. Meanwhile, Nalepa (2010) and David (2011) each draw on Hungary, the Czech Republic, and Poland to test their (albeit very different) hypotheses regarding lustration. Several other studies (Appel 2005, Ellis 1997, Stan 2009a) attempt to examine almost all of the countries of the region, but as a consequence tend to be descriptive and draw few causal conclusions.

Among our other types of truth and justice policies, comparative and inferential research is scant. One reason is that the measures themselves have sometimes been too rarely enacted to allow for multi-case testing. For example, within the realm of criminal prosecutions, very few countries in CEE have attempted to put their erstwhile repressive leaders on trial. Fijalkowski and Grosescu (2015) have put forth the notion of 'transitional criminal justice', but no generalised hypotheses exist for explaining when democratic governments seek such prosecutions, much less what types of criminal paragraphs are used.

Studies of truth-seeking commissions in CEE are likewise limited. On the one hand, some scholars have lamented the absence of real truth commissions in the region (akin to the famous truth and reconciliation commission in South Africa), explaining this with the fact that in some

countries the 1989 roundtable talks between regime and opposition already served as a necessary moment of catharsis (Garton Ash 2002, Mink 2013). At the same time, where certain investigative commissions have been created (e.g. in Germany, Romania, and the Baltic states), scholars have tried to treat these nevertheless as truth commissions (Stan 2009b, Ciobanu 2009, Beattie 2015). However, the question remains whether in conceptual terms these officially appointed commissions can fruitfully be considered as truth commissions in line with well-established definitions for such bodies (Hayner 2002, see also Brahm 2009). Because these post-communist commissions have often had a historical and highly academic focus (looking back at Stalinist-era crimes), they have lacked the strong victim-oriented, restorative justice component usually associated with truth commissions (Pettai 2015). Moreover, in the Romanian case Ciobanu (2009) has shown how the so-called Tismaneanu commission was mostly a product of political manoeuvring by the president at the time in order to discredit political opponents and reanimate anti-communist sentiment. In this respect, it has been difficult to generalise across the region.

Other restorative justice measures such as rehabilitation, compensation, or property restitution for victims have all, of course, been widely practised in the post-communist world. Rehabilitation began already in the post-Stalinist era (McDermott and Stibbe 2015), while compensation or special social benefits for political prisoners or deportees were often added after 1989 (see in particular Schroeder and Küpper 2010). Communist-era nationalisation of property was also righted through large-scale restitution policies implemented throughout the 1990s and often stretching out into the 2000s (Blacksell and Born 2002, Kuti 2009). However, we do not have truly explanatory comparisons across any of these domains as yet, since individual case studies or broad-brush overviews predominate in the literature.

Finally, hypothesis testing has remained limited among works that offer truly composite studies of transitional justice, since these studies have either focused on single cases (Offe and Poppe 2005), they deal with arguably too diverse cases (Grodsky 2011), or they remain analytically very preliminary (Pettai and Pettai 2015). Nevertheless, for studies that adopt this perspective, we see that the explanatory variables tend to be structural. For example, Pettai and Pettai find that Lithuania's more activist pattern of transitional justice as opposed to Estonia's more hands-off stance can be explained by historical-contextual circumstances such as the fact that the post-1945 partisan war was much more intense in Lithuania, leading to not only many more latter-day criminal trials of former KGB officials, but also more victim rehabilitation, compensation, and memorialisation. Likewise, they show how emerging party systems have a decisive impact on truth and justice policies across all domains. Thus, where the post-communist party system is defined by ethnic cleavages (as in Latvia) or ex-communist/anti-communist divisions (as in Lithuania), the resulting polarization of the political field has a tangible effect on the degree to which elites have engaged in issues of retrospective justice (see also Bernhard and Kubik 2014).

Effects of transitional justice

Wherever post-communist truth and justice measures have been advocated or adopted, their predicted effects have included any number of normative, behavioural, or attitudinal goals. First and foremost, transitional justice is said to underpin a firm commitment to rule of law in democratising countries. Both perpetrator-oriented and victim-oriented TJ policies should contribute to a restored ethos of legalism, respect for human and civil rights, and confidence in the judicial system. Additionally, many have maintained that transitional justice will prevent future politicians from abusing power or engaging in repressive activities. It is also argued that the new political system as a whole will perform better without the influence of those compromised or tainted by

the former regime. Lastly, truth and justice policies should increase citizens' overall satisfaction with democracy or their feelings of trust towards politics, political institutions, or in each other (generalised trust) (for a general review of these issues, see Thoms, et al. 2010).

True empirical research into TJ as an independent variable has been rather preliminary until now, not least because of the same methodological issues already mentioned involving conceptualisation and operationalisation. How can outcomes such as improved rule of law or enhanced human rights be properly assessed or measured? Global datasets such as the Transitional Justice Data Base project have been used to test the effects of a tripartite conceptualisation of TJ (based on the existence of trials, amnesties, and/or truth commissions) on broadly defined variables such as democracy and human rights (Olsen et al. 2010). In these studies, CEE countries have been included alongside post-authoritarian and post-conflict TJ cases. Meanwhile, more focused research on post-communist Europe has been presented by Lynch and Marchesi (2015) drawing on another dataset prepared by the Transitional Justice Research Collaborative. In this dataset, numerous truth and justice policies are measured, including domestic criminal prosecutions, amnesty policies and lustration policies; moreover, lustration is operationalised into separate sub-categories depending on the severity of a country's policy. However, in a preliminary analysis of the data, Lynch and Marchesi look mostly at the effects of lustration on subsequent levels of political and civil rights in a country, and they find very few statistically significant relationships. A composite variable of TJ measures also yields no statistically significant results.

Studies of the attitudinal effect of lustration have been led by Horne (2012, 2015), who has attempted to test the impact of lustration on trust in public institutions and national government. Although her basic measure of lustration is limited to just three levels (no lustration, 'insufficiently lustrated', and 'sufficiently lustrated'), she runs numerous statistical models controlling for the timing of lustration, the degree of other TJ measures present, as well as additional political and economic factors. Her findings indicate that 'countries with more extensive lustration programs, more severe lustration programs, and more extensive transitional justice measures have higher levels of trust in public institutions', whereas the impact on trust in national government is inconclusive (2012: 433).

Choi and David (2012) take a unique experimental approach to testing the effects of lustration on public trust. First, drawing on the cases of the Czech Republic, Hungary, and Poland, the authors operationalise lustration as a categorical variable involving three types of lustration systems: dismissal, exposure, and confession. They then embed these variants directly into a survey questionnaire by developing fictional vignettes about a former informant being subjected either to dismissal or no dismissal, exposure or no exposure, confession or no confession. When one or the other narrative is read to a respondent, one can compare the respondent's subsequent degree of trust in government along with his/her trust in the fictional official in order to arrive at a controlled, individual-level measurement of attitudinal change. While David and Choi hypothesise that all three types of lustration should increase trust in government, only respondents exposed to dismissal and confession showed higher levels of trust as opposed to being told that there would be no dismissal or no confession. Moreover, the effect of being told there would be a dismissal policy (versus no dismissal) was much stronger than the effect of confession, hinting that respondents generally welcomed dismissal more than any other option in terms of increasing their trust in government. Meanwhile, the study showed that trust in the tainted officials was likely to improve if the officials went through a process of confession, while exposure would decrease this trust. These results clearly represent one of the more sophisticated and original research designs concerning the effects of transitional justice. In separate work, David and Choi (2006) also examined victims' readiness to forgive perpetrators using similarly original survey

data. While such endeavours are costly and require meticulous preparation, they do exhibit how important empirical and comparative results can be achieved in the field.

Sub-fields of research

As studies of post-communist transitional justice have evolved, a number of sub-themes have developed as additional focal points for different clusters of scholars. The first concerns the comparative study of national institutions established to deal with different TJ policies. Whether it is individual government offices set up to review secret police files (e.g. the German *Stasi-Unterlagenbehörde* [Stasi Records Agency]) or full-scale institutes for national remembrance (including in countries like Ukraine and Moldova), the way in which transitional justice policies have spawned entire administrative structures in some countries arguably constitutes a corollary field to TJ policies themselves. On a conceptual level, these institutions represent an interesting link between TJ and the politics of memory. Many of them, like the Polish Institute of National Remembrance or the Lithuanian Genocide and Resistance Research Centre work in close coop-eration with state prosecutors in tracking down surviving perpetrators of Stalin-era atrocities, or they assist victims of past repression in seeking rehabilitation and compensation. At the same time, these institutions are often home to extensive museums and other commemorative activities aiming at much larger audiences and actively shaping collective perceptions of the communist past (Mink 2013). In the past decade, moreover, these institutions have become increasingly inter-connected through transnational networks, the aim of which is to lobby for greater recog-nition and scrutiny of communist crimes on a pan-European level. While these new actors and constellations concerned with the politics of memory pose an interesting field for the study of transnational practices and agency, the networks also play a role in the field of transitional justice, as they push for lustration in different countries, examine best practice, or serve as watchdogs for ongoing justice processes in different states.

Related to the study of transnational memory actors is an emerging field of study that looks at how domestic transitional justice processes have traversed borders of nation states and national jurisdictions into European judicial and political institutions. Thus, on several occasions the European Court of Human Rights has been asked to cast judgments on the legal permissibility of certain national TJ measures such as lustration or the criminal trials of former secret police agents. Several scholars have used these rulings to compare different legal and historical percep-tions of communist-era crimes and to theorise about the politics of memory through criminal law (Brems 2011, Mälksoo 2014). Additionally, attention has been paid to how memory institutions in CEE (mentioned earlier) and individual politicians from new EU member states have lobbied European representative bodies (such as the European Parliament or the Parliamentary Assembly of the Council of Europe) to condemn the crimes of communism and raise awareness about those crimes. The objective of these efforts has been to secure the adoption of not only landmark declarations denouncing the communist regimes, but also financing for civil society programs aimed at the commemoration and remembrance of past sufferings. In analytical terms, authors have established a connection between the degree to which states have previously engaged in public remembrance and transitional justice and their ability to secure European resources for further activities in these areas. Although arguably many of these studies relate more to the study of memory politics than to transitional justice, they have shed light on new areas of contestation around TJ issues beyond individual national contexts (Gledhill 2011, Neumayer 2015).

Lastly, when we examine the place of transitional justice in Eastern Europe outside the over-riding backdrop of former communism, it is necessary to note that there has been considerable transitional justice also in the context of war-torn ex-Yugoslavia (Simić and Volčič 2012). Much

research in this context has gone into examining 'the politics of cooperation' with the International Criminal Tribunal for the Former Yugoslavia (Ostojić 2014; see also Subotić 2015), raising interesting questions about the impact of international judicial bodies on domestic TJ processes more broadly, and of the Milošević trial on domestic debates in particular (Dragović-Soso 2014). Indeed, an important outcome of these studies has been the realisation that courts have a rather mixed impact on transitional societies. Studies on Serbia in particular show how the international discourses on TJ contributed more to 'silencing' critical public and political debates on the conflict and related responsibilities than to their opening (Obradović-Wochnik, 2013). Some authors have, moreover, argued that by linking compliance with the Tribunal's demands to the EU accession negotiations, Brussels often did more to constrain rather than strengthen domestic truth and justice policies (Spoerri 2011). Ultimately, however, this particular area of research is concerned with processes of coming to term with an ethnic conflict, rather than with the pre-war communist regime and its human rights violations. As Subotić (2015) shows, the Yugoslav case involves many legacies that other CEE countries do not have such as ethnic warfare, multiple transitions to democracy, and strong international intervention. This makes a meaningful cross-regional comparison of TJ, including the former Yugoslavia, rather difficult.

Conclusion

This chapter began with a claim that transitional justice in CEE was different from other subject areas in political science because it was more dispersed in its conceptual landscape and analytical approaches. We end with an observation that although truth and justice remains a salient issue in many CEE countries, it does have a half-life and in phenomenological terms it fades at some point into memory studies and history. The political incentive or imperative to continue investigations of octogenarian perpetrators, to enact supplementary social benefits for aging political prisoners, to complete the processing of property restitution claims, or to issue recurrent parliamentary declarations condemning the communist past is bound to become less acute over time. Certainly, rhetoric and controversy surrounding the legacies of communism will continue, but transitional justice as policy will gradually diminish.

This leaves the field with a challenge. With new analytical material appearing to ebb, research on transitional justice should focus on integrating what we know into a broader international context. In what ways do countries with long authoritarian regimes resemble those of communism and how might the lessons of transition justice in CEE serve these newly democratizing countries? Consider countries such as Egypt, Iran, or Myanmar. How can strong internal security services be dismantled, former perpetrators prosecuted, past human rights abuses investigated, and victims acknowledged in these countries when and if democratic leaders come to power? Irrespective of the conceptual distinctions we may hold between communist and authoritarian regimes, there may be useful lessons to be drawn from the policy structure and political sequencing of truth and justice measures that have been adopted in Central and Eastern Europe. This requires a broader comparative approach.

Another dimension of future research focuses on the place of *Vergangenheitsbewältigung* in many of the still-democratising countries of the region such as Ukraine, Georgia, and Moldova, not to mention authoritarian regimes in Russia, Belarus, Azerbaijan, and Central Asia. While the lack of democratisation in these societies in the 1990s can be explained by any number of different factors, the lack of any real processes of transitional justice should also be looked into as a counterfactual set of cases to CEE. This would make the field likewise more balanced and integrative.

Notes

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2 Indeed, the notion of transitional justice has become particularly stretched when it has been applied to regional and political contexts that have nothing to do with democratic transition and involve measures (such as truth and reconciliation commissions, official apologies or reparations) intended to redress past human rights violations against aboriginal groups (Winter 2014).

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