

紛争、正義、記憶と癒し

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The Age of Transitional Justice : Overview, Approaches, and Challenges

Since the 1970s, a range of practices—termed *Transitional Justice* (TJ)—has developed to support post-repressive societies in dealing with their traumatic past. The approaches that come under its umbrella include : trials, truth commissions, rehabilitation, restitution, and remembering and honoring victims. Robert Jackson, Chief Prosecutor at the first Nuremberg trial, voiced an important precedent for the field in his opening speech in November of 1945, when he stated : “. . . that four great nations . . . stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has every paid to Reason.” Rather than carrying out summary executions, the victors brought their defeated enemies to court. The major Nuremberg trial involved 24 Nazi leaders, eleven of whom were sentenced to death. Similar trials were held in Tokyo by the International Military Tribunal for the Far East from 1946-1948.¹⁾

The South African Truth and Reconciliation Commission (TRC) operated from 1996—1998 and was mandated to investigate 33 years of human rights violations under the apartheid regime. 22,000 victims told their stories to the TRC, hundreds of perpetrators were named. If they came forward and told the entire truth, they were eligible for amnesty. This approach led to emotion-charged proceedings that also gave it the name “the crying commission”. On one occasion, the TRC Chairman wept in the midst of a hearing after a wheelchair-bound former Robben Island prisoner described the tortures to which he was subjected in the course of three decades. This form of dealing with the past aims to heal the victims and society. The South African TRC is arguably the most well-known of the dozens of truth commissions to date.

From the late twenties to the early fifties, millions of Soviet citizens were labelled “enemies of the people” and dispatched to the Gulag to mine nickel and gold, and build railways, roads, and canals, but mostly just to waste away from hunger, cold, and disease. The mass terror that claimed millions ended when Stalin died in 1953. Post-Soviet Russia, unlike post-Nazi Germany or South Africa, had no destabilizing challenge to its repression of individual rights. In consequence, twenty-five years after the collapse of the Soviet Union, the achievements of the Stalinist system are still being acknowledged, and even valorized. Revision of the past has been the short-term remedy to circumvent the obligation to undertake transitional justice measures. This is also accompanied by a present patriotism that calls for Western franchises like McDonald’s to be replaced by “Edim

1) See Sandra Wilson, “The Sentence is Only Half the Story,” *Journal of International Criminal Justice*, 13(2015): 745-761.

Doma” (Eat at Home),²⁾ and museum exhibitions that showcase Soviet interpretations of history.³⁾ The success of these measures can be ascertained by the fact that Stalin’s popularity has ascended in nationwide polls.⁴⁾

The only transitional justice activity in Russia is arguably the NGO Memorial, an organization that emerged under Gorbachev to investigate the crimes of Stalinism and commemorate its victims. It is now Russia’s chief human rights watchdog, but the work of civil society actors who challenge the official narrative of present or past events has become difficult. Since 2014 Memorial has been registered as a “foreign agent”, a politically precarious status it shares with many other NGO’s.

When a repressive past has not been condemned or properly confronted, not only are victims marginalized, but there are new opportunities for old sentiments to arise.⁵⁾ In 2001, Slobodan Milosevic, former President of Serbia, was arrested in Belgrade and brought to the International Tribunal for the former Yugoslavia (ICTY) in The Hague to be tried for war crimes, crimes against humanity, and genocide in the aftermath of an armed conflict, in which an estimated 150,000 people lost their lives.⁶⁾

Milosevic frequently challenged the legitimacy of the Court, and conducted his own defense in a trial that that ended without a verdict when he died in 2006. Post-Milosevic Serbia has been characterized as suffering from ‘arrested development’ and a ‘culture of denial’⁷⁾ of its criminal past.⁸⁾ Serbian military actions are regularly portrayed as justifiable defensive strategies, and nationalist media have eulogized Milosevic as a “legendary leader”.⁹⁾ The ICTY has indicted 161 persons, and concluded most of the proceedings, as it closes its doors and transfers its cases to local courts, or the Mechanism for International Criminal Tribunals. Despite rulings of the ICTY, there is still denial that Srebrenica constituted genocide.

Rwanda experienced colonial rule, which followed and led in imposing ethnic categories on the population. Here, the suppression of individual human rights culminated in a 100-day genocide that claimed the lives of approximately 800,000 Rwandan citizens, the overwhelming majority of whom were Tutsi. Rwanda also had an International Tribunal, but it would have taken the Court 15-20,000 years to try all the suspects. Rwanda opted to supplement these measures by re-inventing the traditional gacaca grass-lawn courts, which operated from 2005-2012. As the mechanisms wound down, Rwanda could boast of having achieved widespread justice, with a total of 1 million Rwandans prosecuted. Today there is one official narrative on the ‘genocide against the Tutsis’—the “healing truth.” Competing narratives are criminalized and ethnicity is proscribed.

2) “Mihalkov Creates Rival to McDonald’s,” *The Moscow Times*, 10 April 2015.

3) “Krym : Istoriiia vozvrashchenie, ‘Na Puti k pobeде’,” visit to Muzei Revolutsii, Moscow, 12 April 2015.

4) “Stalin i ego rol’ v istorii strany,” www.levada.ru, accessed 31 March 2015.

5) Sabrina P. Ramet, “The Dissolution of Yugoslavia : Competing Narratives of Resentment and Blame,” *Southeastern Journal of Politics and Society*, 1(2007) : 63, 66.

6) Ivana Macek, *Sarajevo under Siege : Anthropology in Wartime* (Philadelphia : University of Pennsylvania Press, 2009), pp.185-186.

7) Diane F. Orentlicher, *Shrinking the Space for Denial : The Impact of the ICTY in Serbia* (Budapest : Open Society institute, 2008), pp.21, 90.

8) Vladimir Petrovic, “Arrested Development : Collision of Initiatives to Face the Atrocious Past in Serbia,” discussion paper, NIOD, Amsterdam, October 2012.

9) Karmen Erjavec, Zala Volcic, “Rehabilitating Milosevic : Posthumous Coverage of the Milosevic Regime in Serbian Newspapers,” *Social Semiotics*, 19, 2(2009) : 135, 142.

In 1998 several countries ratified the Treaty of Rome, which led to the establishment in 2002 of the International Criminal Court in The Hague to try persons accused of genocide, crimes against humanity, and war crimes when their national jurisdictions are unwilling or incapable of prosecuting them. At that time, countries like Kenya had high hopes that the Court could investigate their post-election violence. That hearing was plagued by major setbacks, and the charges against the chief defendants were ultimately suspended. To date 23 cases in ten situations have been brought before the ICC.

These TJ mechanisms--while sometimes delivering justice--did not automatically serve the cause of reconciliation. In fact, in many post-repressive states there is an increasing trend to manage national and public memory by suppressing the memory of repression, and emphasizing the “bright past”.¹⁰⁾ Against this background, what changes can be made in the present to proceed toward a bright future? As a starting point, the opening of archives, the proper placement of international tribunal records, the exhumation and forensic examination of mass graves, and the gathering and analyzing of personal and legal testimonies, could provide the public with the “shared custody”¹¹⁾ of a “common past,” necessary for social repair. The “brightness” of the actual past may be dimmed for some, but in this age of transitional justice, a national process of reckoning might achieve sufficient consensus to interrupt the perennial recycling of old repressions into newly “justified” repressions.

10) See Nanci Adler, “The Future of the Soviet Past Remains Unpredictable: The Resurrection of Stalinist Symbols amidst the Exhumation of Mass Graves,” *Europe-Asia Studies*, 57, 8(2005): 1093-1119.

11) Eric Ketelaar, “Truth, Memories and Histories in the Archives of the ICTY,” paper, 60 Years Genocide Convention, the Hague, 8 December 2008, p.13.