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Out of Eastern Europe: Legacies of violence and the challenge of multiple transitions

Most of my scholarly work to date has been centered on this principal question: how are international human rights norms experienced in states and societies that adopt them? I explored how domestic politics adapts, changes, and interprets international norms and the political contestation international norm diffusion generates. My research has therefore cut across several issue areas in both International Relations and Comparative Politics that deal with human rights, identity politics, international institutions, and the ever-growing subfield of “transitional justice.”

This cross-disciplinary field of “transitional” or “postconflict justice” – the study of ways in which societies deal with legacies of past violence - has developed almost beyond recognition since its early days in the early to mid 1990s. From the very beginning, the field was mostly focused on post-violence experiences of “democracies in transition” – primarily in Latin America, South Africa, and then in Eastern Europe. As countries transitioned from authoritarianism to some form of democracy, the early transitional justice scholarship predicted that domestic coalitions would form around demands for truth about past violence and justice for perpetrators of abuse.

This optimistic expectation about the catalytic effect that moments of transition will have on human rights and justice for past violence has also grown out of the expansion of human rights norms more broadly in the 1990s. These norms are embedded in the larger norm of global liberalism, which is evident in the increasing legalization of the international system and reliance on the rule of law as the appropriate model of state practice. The global trend toward legalization and “judicialization” of politics, in which transitional justice is embedded, is also

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showing signs of spreading and institutionalization. Solving problems through an institutional or a legal setting is becoming an increasingly internationally accepted practice even for issues that previously were not considered to be in the legal purview, such as legacies of past violence. The increasing visibility of global human rights has also produced increasing public interest in and awareness of transitional justice, as well as an international expectation that some mechanism of accountability is due in the aftermath of mass atrocity and that states can no longer avoid this responsibility.

The normative shift at the international level towards legalization as a solution for human rights abuses has then been translated and simplified into international policy that makes very specific transitional justice mechanisms, such as, for instance, cooperation with war crimes tribunals, a working proxy for respect of human rights. For example, the European Union has directly tied Serbian and Croatian accession negotiations with full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Importantly, the European Union has chosen this particular policy as a measurement of candidate states’ compliance with the larger Copenhagen Criteria of strong democratic institutions and protection of ethnic and human rights. This simplification had significant consequences for international policymaking, as compliance with international justice models increasingly became a marker of domestic human rights policy, opening up large space for domestic elites to offer narrow institutional compliance with international justice while continuing to deny responsibility for past human rights violations.

And while the increasing presence and visibility of transitional justice has been followed by the increasing attention of the scholarly literature, not enough attention has been paid to questions of how exactly states go about complying with transitional justice requirements under international pressures, and to what

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domestic political effect. Evidence from Eastern European cases was indispensable in filling this theoretical void.

The Eastern European experience proved, unsurprisingly, to be quite different from other post-conflict societies early transitional justice scholarship examined. It also provided rich empirical material to evaluate and further nuance theories of transitional justice and diffusion of human rights norms. The principal difference - and a unique analytical advantage of the Eastern European perspective – was the existence of multilayered and overlapping transitions in the region: from peace to war to unstable peace (Balkans, Caucasus), from multiethnic federal to ethnic nation-states (Balkans, Czechoslovakia, the Soviet Union), from centrally planned economy to some hybrid of the free market, and from authoritarianism to some type of democracy (across the broader region). These multiple transitions developed in different directions, were more consistent in some countries, and more contradictory in others.

This richness of the East European experience complicated much of transitional justice scholarship. It injected much more skepticism about post-conflict reconciliation to the literature that grew out of and used the perceived successes of the South African and Latin American transitions as models to be emulated across the world. The paradox of multiple transitions occurring simultaneously, with social forces pulling the countries in many different directions, opened up much more space for analytical questioning of the concepts of social healing, post-conflict resolution, or political forgiveness. The great reluctance across much of the region to engage systematically in addressing the legacies of both communist and post-communist violence has also challenged other major assumptions from human rights literature, which predicted strong social demand for justice after conflicts end.

The Yugoslav experience complicates the transitional justice landscape even further. As most of Eastern Europe entered the 1990s with hope and excitement about the prospects of democracy, liberalism, and human rights after half a century of communist totalitarianism, former Yugoslavia entered the decade under heavy clouds of looming war and total political and human insecurity. As the country broke apart along its seams, communism gave way to something much worse – to protracted civil war, grim levels of violence, and ultimately – genocide. From this lived experience across Yugoslav successor states, 1989 was not something to be

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celebrated. The transition from communism was a transition to nationalism and then to war. This was not a transition to democracy but to pernicious ethnic politics. Finally, the latest “transition,” the collapse of authoritarianism in Croatia in 1999 and in Serbia in 2000 did not usher in clearly liberal democratic governments interested in seriously delegitimating criminal regimes of the 1990s. Instead, the priority of post-authoritarian governments was electoral success tied to European Union accession.13

As a consequence of this multiple and unsettled transition, transitional justice in the former Yugoslavia was carried out in the political context much different from the one existing human rights scholarship envisaged. Responding to international institutional pressures, Serbia, Croatia, and Bosnia did indeed implement various mechanisms of "transitional justice." Transitional justice in the three countries, however, was guided by very localized political motives: to get rid of domestic political opponents, to obtain international financial aid, or to gain admission to the European Union. As postconflict justice became "hijacked" for such local political strategies, it fostered domestic backlash, deepened political instability, and even created alternative, politicized versions of history.

The social demand for justice and truth about the violence and its perpetrators was consistently low, and was concentrated very narrowly within the community of immediate victims. Larger society – in all Yugoslav successor states – showed very little interest in revisiting crimes of the past. In fact, with every year that has passed, and with a number of different transitional justice mechanisms introduced (truth commission, international trials, domestic trials), the public interest has waned, not increased.14

Yugoslav transition was also a partition. This major transformation of the polity from a multi-ethnic federation to individual ethnic states contributed greatly to the low domestic demand for justice. Unlike other major transitional justice projects in countries like South Africa or Argentina where truth, justice, and reconciliation were considered necessary for preserving national unity and building a future together with former political enemies, in Yugoslav successor states, this major incentive — living together — was absent. This is why it was so hard for both international and domestic promoters of transitional justice to make facing the past an issue of national priority. It was very difficult to make local population care about atrocities committed against groups who lived in other countries and with whom they were unlikely to ever interact again.

Further, again in contrast with much of human rights scholarship expectations, the introduction and implementation of transitional justice institutions did not lead to the increase in the overall respect of human rights. Across the post-Yugoslav space, even with the saturation of various transitional justice models, human rights abuses remain rampant. Exclusionary discourse and policies against ethnic minorities have now been replaced with exclusionary discourse and policies against other minorities – the LGBT community, the non-existent Jewish community, foreigners, women, NGOs, and various “others.”

Finally, the multiplicity and overlapping quality of Yugoslav transitions has meant that transitional justice efforts to deal with one criminal regime (nationalist criminality of the 1990s) eclipsed efforts to deal with legacies of the earlier criminal regime (communism 1945-1991). This neglect to undertake any serious transitional justice analysis of communist era violence has produced a renewed cycle of historical revisionism that glorifies – in discourse as well as policy – all anticommunist movements, even anticommunist fascist collaborators during World War II.

Communist crimes, in other words, were never analyzed in a political vacuum. They were utilized for nationalist mobilization of the 1990s and beyond, and were selectively activated for very specific nationalist purposes: to further solidify the victimization narrative of one’s own nation, to justify civil war as a break from communist oppression, and to build the post-communist state on a profound rejection of the communist ideology by elevating previously suppressed expressions of identity, such as nationalism and religion.

This political use of communist era crimes continued in the aftermath of the 1990s wars. The postwar legitimacy of the newly established former Yugoslav states rested on a rejection of communism but also a reconnection with the pre-communist, more purely “national” character of statehood. This is why in both Serbia and Croatia, the post 1990s elites, even in the aftermath of Milošević’s ousting in 2000 and Tuđman’s death in 1999, insisted on rehabilitating many anticommunist public figures, including many anticommunists who were also pro-fascist allies. The purpose of this agenda was to bypass the communist past and reaffirm the historical connection with pre-communist Serbia and pre-communist Croatia, as proto-states that serve as inspiration for contemporary manifestation of ethnic statehood.

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Lastly, these mnemonic projects were led by very specific and clearly delineated political coalitions. In both Croatia and Serbia the winning coalitions in the aftermath of communism’s collapse were former communists turned virulent nationalists. Their political opponents, anti-nationalist liberals, saw as their principal political struggle the fight against nationalism and ethnic war. They were interested in exposing the crimes of the 1990s, which perpetrators mostly got away with impunity or even enjoyed high positions in postwar governments. The liberals had very little interest in revisiting crimes of the communist era when much more recent and, by some measure, more brutal crimes of the recent past were left unexamined and unpunished. Significantly, many of the Yugoslav post-communist liberals themselves came from the communist background, which had shaped their view of this era.

This lack of urgency by liberals in the Yugoslav successor states to revisit communist crimes is strategically understandable – exposing recent crimes of perpetrators still in power seems like a clear priority. This reluctance is also understandable in context – Yugoslavia was destroyed by individual nationalisms, and the war that followed the death of the federation made the old Yugoslavia seem much better than the new alternatives.  

The consequence of this decision, however, was that investigation of communist crimes was left to the nationalist bloc. This peculiar twist on the “red/black” political cleavage meant that the only examination of communist violence was conducted by nationalist authors and institutions, who approached this historical project with a clear political agenda: to demonstrate that communist crimes were, in fact, much worse than the crimes of the 1990s. If this can be demonstrated, then the transitional justice effort for accountability for the more recent crimes can be delegitimized, demoralized, and ultimately defeated.

Transitional justice for communist crimes was, therefore, politicized from the very beginning. It was ignored for political reasons by liberals, pushed for political reasons by nationalists. Transitional justice, in other words, reflected contemporary political divisions. It is only within this context that any analysis of transitional justice in the former Yugoslavia since 1989 can be carried out with any scholarly credibility.

Theoretically, this uniqueness of the Yugoslav transition – or whatever we choose to call the 1990s with more analytical accuracy - and the place it had within the larger East European post-communist transitions produced very different transitional justice outcomes than the broader human rights literature predicted. Using extensive data from the Yugoslav cases and comparing them with other East European transitional justice processes, my work challenged the scholarship on international norm diffusion, introducing new theoretical arguments about

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domestic use and appropriation of international rules generally, and human rights norms specifically.

A few specific theoretical findings from Yugoslav cases are important for future theory building in human rights and transitional justice scholarship.

First, domestic political elites use international institutions, such as institutions of post-conflict justice, as resources for political mobilization in the context of domestic contention. Evidence from East Europe challenged optimistic accounts from human rights scholarship that predicted increasing social support for new human rights institutions as international actors make coalitions with domestic allies and pressure governments to change their policies. Instead, domestic translation and appropriation of international norms and institutions always faces significant and varied domestic challenges, which often produce unexpected and contradictory policy effects.

Second, when states adopt international norms in the absence of broad domestic demand for normative change, this become a strategic, even subversive, choice for those states that do not have much substantive interest in policy change. So, for example, carrying out a human rights or a transitional justice project allows domestic elites to signal their respect of international institutions, while using justice mechanisms domestically to achieve other political goals, such as getting rid of domestic political opponents, obtaining financial aid, or gaining membership in prestigious international organizations.

Finally, which political elites take on a transitional justice project matters a great deal in both the implementation of a transitional justice mechanism as well as in its normative interpretation. Transitional justice projects are important, difficult and traumatic enterprises. They ask a lot of citizens and of political and intellectual leadership. When they are carried out for instrumental reasons by cynical political actors, they are not only ineffective, but can easily fuel a new cycle of conflict and violence.

Empirical research on East European transitions and multiple human rights challenges they presented introduced many new important variables to theories of transitional justice, political change, and democratic consolidation. This research tampered much optimism that stemmed from an outpour of domestic demand for change in South Africa and a number of countries in Latin America. East European transitions were not linear processes. They were overlapping, nested transitions, transformations that in many ways went back, and not only forward. Adding this

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complexity of the lived experience of democratic and post-conflict transitions makes human rights scholarship richer for it.