

CHAPTER 6

Transitional Justice and Memory

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In the study of politics, Eastern Europe represents a region that allows us to study stirring phenomena like the dynamics of popular protest, the rebirth of democracy, and the development of new national identities. It does so, however, in response to the preceding period of severe political and social repression that, in the case of Central and Eastern Europe, lasted some five decades, while in Ukraine, it lasted more than seven decades. Although this oppression went through several phases and had clear variations from country to country, it encompassed not only restrictions on free speech, association, and travel but also more horrific human rights violations such as widespread surveillance, indiscriminate arrest, mass deportation, and summary killing. Moreover, much of what had happened was kept secret, known only through individual recollections and family stories. While liberation between 1989 and 1991 was an exhilarating event for all of these peoples, it also came with hard questions about how to deal with this past: Who should be held to account? How should victims be acknowledged? How should the country as a whole remember this era? As each society struggled with these issues, it also became apparent that the periods of Nazi and communist rule in the region had not been a mere interregnum or hiatus; for many, it was seen as a national ordeal that would mark the identity and politics of these peoples for decades to come.

The process of reckoning with past regime abuse and people's suffering is generally called "transitional justice." Postcommunism is only one of three broad contexts in which this increasingly global phenomenon has occurred, the others being after military regimes (such as in Argentina or South Korea) and after civil wars (such as in Sierra Leone or Sri Lanka).¹ What is special about the crimes and abuses of communist rule is that they were more pervasive and subtler than those in other regimes. Therefore, while Central and East Europeans could draw on certain transitional justice lessons from other countries, they also had to deal with specific communist-era legacies, such as dismantling extensive secret police networks or returning thousands of buildings and other forms of property that had been nationalized by the communist authorities. Beyond this, because communist rule had followed World War II and the brutalities of Nazi occupation, many of these countries actually had to right the wrongs of two periods of repression almost simultaneously. Third, while transitional justice in Central and Eastern Europe was strongly focused on "righting the wrongs" of the preceding regimes, it also had a forward-looking

commitment to rebuilding democratic values, rule of law, and societal trust that would help to undergird the region's return to the Western world.

Yet, all of these similarities notwithstanding, the countries of Central and Eastern Europe have also varied considerably in terms of not only the timing and scope of transitional justice measures adopted by the new governments, but also the levels of political controversy that have accompanied these policies. Some countries like the Czech Republic were early and aggressive implementers of transitional justice, while others, such as Bulgaria, have been late and halting. Some countries, like Poland, have seen recurring waves of political debate over the need for such policies, while others, like Estonia, seem almost to have "closed the books" on these matters. In any case, none of the Central and East European states has been able to avoid dealing with the past, as Poland's first postcommunist prime minister put it, by "drawing a thick line" and simply moving forward.

Moreover, as more and more time has elapsed since the collapse of communism, the question of how to deal with the past has gradually shifted from being an immediate issue of what to do with the remnants of the old system to a process of forming a common national memory of those troubled times. The oppressors of the former regime and their victims are no longer alive or they are not as prominent in these societies as they once were. New dimensions of political and social life, such as European Union (EU) membership, socioeconomic development, or a resurgent Russia, have also often overtaken transitional justice. Debate about the Nazi and communist eras has frequently shifted toward how this past should be remembered and commemorated, depicted and framed, taught and communicated. This phenomenon has been called the politics of memory. Unlike transitional justice, which focuses on specific individuals or groups, the politics of memory looks at how politicians seek to influence society as a whole by propagating a certain "correct" version of history and thereby craft particular historical identities for the longer term. Yet, here too, there are many national differences, in terms of not only how historiography has evolved, but also how politicians have tried to instrumentalize commemorative events, institute certain national memorial days, and sometimes even adopt formal laws on how the past should be named and remembered in the public sphere.

Different Dimensions of Postcommunist Transitional Justice

We begin by taking a closer look at transitional justice and laying out two important frameworks for analyzing this phenomenon. The first takes a time perspective and examines not only how quickly or slowly new democratic governments in Central and Eastern Europe adopted certain transitional justice measures but also how far back in time the regime abuses were that these measures sought to rectify. The second framework involves understanding the range of specific measures countries could adopt concerning transitional justice. Here, the issues concern the degree to which countries deal with both perpetrators and victims of past regime abuse, as well as the legal level at which these measures are implemented.

When new democratic governments come to power, often their first priority is to deal with the immediate aftermath of the prior regime.² This is not easy, however, since the necessary criminal procedures or laws for prosecuting offenses like human rights violations will not have existed under the legal codes left over from the communist era. In this respect, new democracies always face a dilemma. Either they can implement quick, but perhaps also arbitrary, justice (by banning, say, all former communist party members from politics regardless of what they did as members) and, thereby, undermine the principles of rule of law which democracy itself stands for. They can take time to pass new legal frameworks, but in so doing may lose momentum in the process as a whole (as certain suspects flee into exile or disappear into obscurity). Much will depend on the strength of the new democratic governments themselves. Where democratic leaders are in a strong position politically, they can adopt a number of transitional justice policies quickly. Where former rulers were able to negotiate their departure from power and remain active in political life, progress on transitional justice may be slower. Several electoral cycles may be needed before political forces committed to dealing with the past can regain power and begin to adopt relevant measures. In these cases, we often speak of “late,” “delayed,” “second-wave,” or “post-transitional” justice.

In Central and Eastern Europe, the Velvet Revolution in Czechoslovakia allowed new leaders to push for speedy adoption of laws that not only cleansed the civil service of former communists but also offered rehabilitation and compensation to political prisoners under the former regime. Although Czechoslovakia later broke up through the Velvet Divorce, the Czech Republic continued implementation of these steadfast policies (while Slovakia did not). Albania was also a case of quick action on transitional justice under the Democratic Party elected in 1992. The new government moved swiftly to replace former communist officials with its own loyalists. It also passed legislation seeking to bar ex-communists from standing for future elected office. However, because many of these measures began to be used for very partisan purposes, the Democratic Party soon became unpopular. The ex-communist Socialist party was returned to office in 1997, and transitional justice essentially stopped.

In Lithuania, Hungary, and Poland, another combination ensued, as ex-communists were able to return to power within just a few years of the transition, and thereby stall transitional justice measures relatively quickly. At the same time, right-wing forces were able to reestablish control later on and thereafter undertake what was mentioned above as delayed transitional justice. Conservative parties in Lithuania, for example, regained control of government in 1996, and then began a series of truth and justice initiatives lasting for many years. In Poland, the rise to power of the Law and Justice Party in 2005 also opened up a new wave of transitional justice, including a more aggressive policy preventing former secret police employees from working in the public sector.³ Bulgaria, Romania, and Ukraine, meanwhile, represented cases where ex-communist parties remained relatively strong throughout the 1990s (even when in the opposition), and, as a result, transitional justice remained weak all around.

Another dimension of time important for studying transitional justice relates to the fact that communist rule in Central and Eastern Europe lasted for more than four decades and in Ukraine upward of seven. The consequence of this was that in some countries it was easier for politicians to address regime abuses that were farther back in time than

to confront those where perpetrators may have still been active in society. Establishing a historical truth commission to look into the 1956 uprising in Hungary, the 1941 Stalinist deportations in Latvia, or the 1932–1933 Holodomor famine in Ukraine—even if it named specific persons involved—was politically a less audacious act of transitional justice than trying to put late communist officials on trial or establish expensive reparations programs for former dissidents. Morally speaking, both types of justice were important, especially in terms of understanding the whole communist era. However, when we want to understand why some countries addressed certain regime abuses and not others, we can see that some issues were costlier to tackle politically than others.

Indeed, the two time dimensions mentioned here were often intertwined. When new democratic governments did not have the political muscle to directly confront former communist leaders, they could focus on dealing with historical instances of repression. Likewise, when left-wing governments were in power and they had little interest in dwelling too much on the immediate past, they could still demonstrate a degree of *bona fides* regarding transitional justice by sponsoring measures that addressed decades-old injustices without fear of undermining their own political legitimacy. Sometimes governments could come to power many years after democracy had been established and then seek to take on tough transitional justice issues like putting an ex-communist leader on trial, such as Poland did against Wojciech Jaruzelski and Czesław Kiszczak.



Photo 6.1. General Wojciech Jaruzelski, president of Poland in 1989 and 1990 and former head of the Polish military, was tried for attacks on demonstrators in Gdańsk during the 1970 demonstrations. The trial ran for nearly a decade and then was dropped in 2013 due to his age and illness. (Adam Chelstokski/FORUM)

But when this combination of time dimensions (late, but aggressive transitional justice) took place, the relevance of the act was often diminished, since the leaders were likely to be very old and the charges more difficult to sustain.

A second overarching framework on the basis of which transitional justice processes in Central and Eastern Europe can be compared involves scrutinizing the breadth of different measures that are undertaken. When governments abuse their power or repress their citizens, justice should, in theory, encompass both punishing the perpetrators and acknowledging the victims. In reality, however, it may be the case that the latter is easier than the former. Offering compensation or rehabilitation to a deportee is often simpler to carry out than proving the legal culpability of the secret police official who ordered the deportation. This means that one aspect of studying transitional justice concerns looking at how much countries are able to deal with one or the other side of this same coin.⁴

Furthermore, even when a country addresses both perpetrators and victims, it may do so at three different levels of policy. On the one hand, classical transitional justice begins with enacting *criminal-judicial* legislation that would allow for the prosecution and trial of former regime officials responsible for human rights violations. Likewise, however, it is important to recognize that criminal-judicial legislation can pertain also to victims, in the sense of reversing erstwhile convictions imposed during show trials or politically motivated prosecutions. This is known as rehabilitation. A step lower in terms of policy involves *administrative-political* measures that can deprive perpetrators of certain political rights or privileges, while restoring or according such benefits to victims. Again, these tracks need not take place at the same time, but they both involve mid-level policy measures that will often be enacted by law but can also be implemented through administrative decisions. Lastly, certain truth measures can be seen as having purely *symbolic-representative* value in terms of shaming perpetrators or acknowledging the suffering of victims. As such, they would appear to have the least consequence. However, for individual perpetrators or victims these can still be important, as when a perpetrator's professional career may be damaged by having been exposed as a one-time secret informant, or when a victim's feeling of dignity is restored when he or she is able to gain access to surveillance files compiled by the security services, or participate in official ceremonies commemorating past repressions.

In the sections that follow, we will bring examples of all of these policy variants of transitional justice. However, we will also try and show where different time dimensions manifested themselves. That is, we will see how some of these types of action were taken early on following the collapse of communism and others were sometimes pursued years later. Likewise, we will observe that certain policy measures were more prevalent toward more historical injustices, while others pertained mainly to more recent communist repression.

CRIMINAL-JUDICIAL JUSTICE: PROSECUTION AND REHABILITATIONS

Few Romanians alive during the collapse of communism will ever forget what they felt when they heard in December 1989 that their country's ruler Nicolae Ceaușescu and his wife Elena had been tried and summarily executed barely three days after they fled from

power. This was an example of immediate criminal justice vis-à-vis a former repressive leader akin to what one might imagine happens stereotypically when a society tired of being subjugated by a ruthless dictator rises up for revenge. Needless to say, the trial conducted over the Ceaușescus was not a formal court procedure. After he and his wife were caught, they were “tried” by their military captors and put before a firing squad. This illustrates one of the first challenges that many postcommunist countries faced when they tried to criminally prosecute former leaders: What law should or could be applied toward communist-era repression so that it would not be considered retroactive or *post hoc* justice? How could evidence be gathered for such culpability, how should such trials or procedures take place, and what should constitute proper punishment if an accused were found guilty?

New leaders in three countries in the region, the former East Germany, Poland, and Bulgaria, actively sought to put prominent communist officials on trial; however, their strategies in this regard slightly differed. Both Germany and Poland sought to build cases against Erich Honecker and Wojciech Jaruzelski, respectively, that centered on their role in ordering the direct killing of civilians. In Honecker’s case, it involved his responsibility for issuing a policy to shoot people trying to cross the border to West Germany surreptitiously. For Jaruzelski, it concerned a command to open fire on workers striking in 1970 at the Gdansk shipyards. Ultimately, however, both of these trials failed, not only because of the defendants’ delaying tactics and their advanced age by the mid-1990s, but also precisely because it was difficult to prove culpability so high up in the chain of command. The case against the longtime head of Bulgaria’s Communist Party, Todor Zhivkov, was for a more banal offence of misappropriating state funds. In his case (along with a number of other defendants in the trial), the prosecution was more successful, and multiyear prison terms were handed down because these were provable offenses. The only successful prosecutions for actual political repression were of mid- and lower-level officials such as border guards or security personnel, who were tried and found guilty of manslaughter in specific incidents. Officials in Germany carried out more than five hundred such prosecutions, while in the Czech Republic, the number was around fifty.⁵

In Hungary, a different difficulty emerged when, during the early 1990s, authorities attempted to carry out a form of more retrospective justice by seeking criminal charges against those who had been involved in killing during the 1956 revolution or forty years earlier. Repeatedly, the Hungarian parliament passed legislation enabling the relevant prosecutions to begin; each time, however, the Hungarian Constitutional Court issued rulings declaring such amendments illegal as they overrode the statute of limitations that existed for manslaughter under Hungarian law.⁶ Eventually, the court acknowledged that the statute of limitations would not apply if repressions during the 1956 uprising constituted a war crime or a crime against humanity, since these notions derived from international law. This opened up a new legal avenue for prosecutors, and a number of trials were launched, including against Béla Biszku, a top-ranking communist official from 1956 who had publicly asserted that the reprisals had been justified.

The proposition that communist-era repression constituted in many cases a full-scale crime against humanity without any statute of limitations became a prevalent legal approach in the Baltic states as well. For these countries, the motivation was even more acute, since repression during the 1940s had included multiple waves of mass deportation,

most prominently in 1941 and 1949. During those years, more than 180,000 people had been herded into cattle cars and forced to resettle in remote areas of Siberia or sent into the Gulag. Countless individuals died along the way, while even more perished later amidst the harsh labor and living conditions. Many of the responsible agents of the Soviet secret police at the time, the NKVD, continued to be alive in the 1990s. The parliaments in Estonia, Latvia, and Lithuania therefore reworked their criminal codes in order to lay out statutes against not only war crimes and crimes against humanity but also genocide. They used these provisions to begin several hundred investigations (particularly in Lithuania), which resulted in nearly sixty convictions. However, as in many other countries, many of the accused died during trial proceedings, or they were given suspended sentences because of their advanced age.

Judicial authorities were also heavily involved in the process of rehabilitating victims of communist-era repression. Laws clearing individuals of conviction for politically motivated crimes were passed across the region as soon as democracy was reestablished. One example was Czechoslovakia, where barely six months after the Velvet Revolution, parliament adopted a rehabilitation law that invalidated a wide range of convictions that had been carried out against dissidents and other opponents of the regime based on specific, political offenses listed in criminal law. It sufficed to simply rescind these statutes and annul all convictions issued on their basis in order to carry out rehabilitation. At the same time, other cases were more ambiguous, such as when people had participated in some anti-regime demonstration, but were convicted for simply “hooliganism.” These cases often needed to be reexamined before rehabilitation could be granted. Lastly, many countries (such as the Baltic states) adopted laws that went farther back in time in order to deal with the victims of Stalinist repression during the 1940s and 1950s. In these instances, prior convictions were also readily overturned, since extrajudicial tribunals had often handed them down. Nevertheless, there were also rehabilitated individuals who had actually committed crimes. In Lithuania, officials were forced to rescind rehabilitation for several dozen individuals, after it came out that although these people had been tried for anti-Soviet activity in the late 1940s, they had also been linked to the repression and killing of Jews during the Nazi occupation. Serbia and Croatia, meanwhile, rehabilitated a number of controversial figures from World War II following their conviction by postwar communist tribunals despite much controversy among legal and academic experts.

POLITICAL-ADMINISTRATIVE TRUTH AND JUSTICE: LUSTRATION AND COMPENSATION

Transitional justice in Central and Eastern Europe has most often been associated with lustration, or the process of investigating, exposing, removing, and possibly sanctioning individuals for different degrees of communist-era collaboration that did not involve a formal criminal offense. In reality, this phenomenon involved three separate policy dimensions. First, what level of prior participation in the regime would be seen as warranting lustration? Second, what kind of more precise administrative sanction would be imposed for that involvement? And third, how would the screening of existing state employees as well as the vetting of future employees be organized?⁷

Regarding the first dimension, most countries concentrated their attention on those who had most directly been responsible for repression: full-time agents and employees of the former security services. Therefore, some form of screening and vetting legislation targeting these people was adopted at some point in almost every country of the region. Closely related to this category, however, were the thousands upon thousands of informants and collaborators of the secret police, whom most countries also sought to subject to lustration in some way. Yet, here the verification process was not so easy, since it was never clear whether operative files from the secret services (also often seized after the democratic transition) could really be trusted to determine someone's degree of involvement given that agents of the police may have tried to embellish their successes within the system. This kind of ambiguity often gave pause for thought in some countries such as Estonia, where informants of the Soviet KGB were never actively pursued even though lustration legislation allowed for this. Meanwhile, other countries such as Albania cast their net in a different direction and included as subject to lustration all those who had been members of the Politburo and Central Committee of the former communist party as well as communist-era parliamentary deputies and presidents of the Supreme Court.⁸ In other words, a number of *ex officio* positions from the past regime could be included within the circle of lustration, irrespective of what these people had actually done in office.

On the second question of determining appropriate sanctions, most countries would begin with a ban on employment in the civil service (especially for former secret police agents). In some countries, however, the notion of civil service was extended beyond simple administrative positions to include not only the courts, but also high-level management positions in state-owned companies (the Czech Republic) or even university management positions (Poland). This implied a maximum effort to keep former regime individuals out of the democratic state. Moreover, Lithuania would also seek to bar these people from working in many areas of the private sector, such as banking, detective services, or the legal profession. Although this 1999 version of the country's lustration law would eventually be overturned by the European Court of Human Rights, it did lead, in the very beginning, to many private firms firing individuals alleged to have been involved with the Soviet KGB.⁹

A strong level of formalized noncriminal sanctioning of former regime officials was adopted in Latvia, which after 1996 screened all candidate lists for parliamentary and local elections and authorized the central electoral commission to make public the names of all those who had been listed somehow in leftover KGB files. Moreover, if a court had formally proven a person's collaboration with the Soviet security forces, he could be removed from the electoral list. In other words, the country effectively denied former agents their right to stand for public office, which the European Court of Human Rights did uphold in the initial term, but eventually declared a violation of European human rights law in 2008.

To deal with this entire process of personnel review (the third important policy dimension), countries in the region established a variety of administrative offices and procedures. The Czech Republic had perhaps the most rigorous system, requiring individuals seeking to retain or obtain employment in the public sector to request a formal lustration certificate from a special section of the Ministry of Interior tasked with

reviewing available files from the former secret police, the StB. In this respect, the burden of proof was put on each individual to directly vindicate himself before being allowed into the system. Poland and Hungary enacted milder procedures, both in terms of limiting the scope of government posts under review to high-ranked elected officials (and not all civil servants) as well as by making the screening process less onerous. For example, under Poland's 1997 legislation, individuals were required to sign a declaration disclosing any prior collaboration with the old regime. Thus, in theory, one could admit collaboration and, in so doing, be exonerated and free to seek high elected office. If one lied on one's declaration, a special court could review the evidence and reveal the person's name in public. However, these proceedings were generally conducted behind closed doors, so this quickly became a battle cry among conservatives like the Kaczyński brothers for a more rigorous lustration procedure. Lastly, Estonia took one of the most liberal approaches, specifying that current and future state employees merely sign an "oath of conscience" that they had not engaged in communist-era repression. Moreover, these documents would remain simply on file unless another individual or prosecutor specifically contested them. In this respect, the Estonian system presumed that individuals were telling the truth before they were scrutinized (and not the other way around). Moreover, this system came to an end relatively quickly (December 2000), instead of being extended in duration as in the Czech Republic.

Needless to say, all of these different approaches endured various levels of criticism for being either too lax or too severe.¹⁰ Moreover, when particularly respected politicians were brought down by these provisions (such as Juris Bojārs in Latvia, a one-time prominent member of the Latvian independence movement, but also ex-major in the KGB), it became obvious that cleaning out the skeletons in the closet would be tricky. Yet, beyond these formal procedures and their attempts to adhere to some degree of rule of law, the phenomenon of "informal lustration" also flared in each postcommunist country, as politicians traded accusations of possible collaboration by their opponents and the news media both amplified these debates and provided fodder of its own through investigative reporting and public speculation. This was the crossfire to which two prime ministers in Poland (Jan Olszewski and Jozef Oleksy) would be subjected during the first half of the 1990s before Poland even had a lustration law. In Bulgaria and Romania, this frenzy accelerated in the 2000s partly as a response to insufficient lustration policies being passed in the first place.¹¹

This continuous politicization and instrumentalization of lustration controversies also indicates why (in contrast to many other transitional justice measures) these policies have, most often, been subject to a ratcheting up or a tightening many years after democracy has been consolidated. In other words, a time dimension is clearly evident in this domain, such that many analysts have spoken of "late lustration" when examining, for example, how both Romania and Poland tried to stiffen their policies in 2006.¹² These kinds of shifts have also made explaining lustration a complicated affair. While structural issues such as type of democratic transition may have mattered in the initial term, there have also been many wildcards in play when one considers how sensationalist media revelations can have unforeseen consequences for public opinion or political posturing. These waves of controversy have also been criticized for undermining one of the very objectives of transitional justice: to rebuild trust in society and the new democratic system.

Turning to the victim side of political-administrative transitional justice, it is perhaps no surprise that countries that decided to legally rehabilitate victims of repression also often worked out additional, administrative forms of reparation, including granting those individuals monetary compensation and/or other social privileges. Ideally, this type of transitional justice involved adopting formal legislation that would accord certain individuals special legal status as “repressed persons” and make them eligible for particular benefits. Lithuania adopted such a law in 1997 specifying no less than three dozen types of repression or persecution individuals may have suffered during either the Soviet or Nazi German occupations from 1939 to 1991, and making all of them entitled to special standing.

In terms of monetary compensation, former political prisoners in the Czech Republic, for example, received a base payment of roughly \$83 per month of incarceration under the communist regime, while in Bulgaria those who had been held in labor camps or imprisoned could receive up to \$1060 per month of detention, as would former prisoners in Romania.¹³ Meanwhile, in some countries like Poland, interesting dividing lines emerged on temporal grounds. The country’s original 1991 compensation law limited benefits to those who had suffered from 1944 to 1956, thereby making the measure largely a retrospective one. Many members of the Polish Senate objected to this restriction, saying that this would belittle suffering that had happened after the end of Stalinist terror. At the same time, a number of more recent victims of repression (especially those who had been imprisoned during the martial law period after 1980) believed that compensation for them would cast in a somewhat disparaging light the pro-democracy struggle that these people had waged simply out of their convictions. Moreover, many politicians born out of the Solidarity movement were uneasy about making themselves personally eligible for such benefits. The expansion of compensation policy in Poland therefore remained a thorny issue for years to come.

In the Baltic states, the focus was overwhelmingly on measures to compensate suffering for the victims of the 1940s’ deportations. All three countries tailored their pension systems and even some privatization schemes to count time spent in Siberia as part of a victim’s years of gainful employment. Lithuania also paid such victims direct compensation, although this raised certain ambiguities, since it was the Soviet authorities who had deported these people; therefore, some found it questionable that the new Lithuanian state should take on this burden instead of, say, Russia as the USSR’s successor state.¹⁴

A further administrative type of reparative justice for victims involved the restitution of any property taken away by the communist authorities. Sometimes this concerned political prisoners or deportees, who had had their homes or other property seized by the communist state. For these victims, the process of restitution was relatively easy. However, a much broader form of this policy involved the restitution of property that had been nationalized by the communists usually during the beginning of their regime. Here the question was should all of these former owners and their descendants get back their property, and if so, in what manner? Moreover, property had to be differentiated into at least five forms: agricultural land, dwellings and buildings, nonphysical property such as stocks, property that had been demolished or destroyed during war, and church or religious community property. Concerning agricultural land, restitution processes generally proceeded smoothly, since in most Central and East European countries (with the exception of Poland), agriculture had been collectivized, and this meant that all arable

land was in state hands. In most instances, it was not difficult to review whatever land records existed prior to nationalization and to develop procedures for the return of this land, even if in the short term it went to smallholders and would prove counterproductive from the perspective of developing a new and strong agricultural sector.¹⁵

More controversial was the policy of returning houses and apartment buildings to former owners, especially if those dwellings now had new tenants and these people would suddenly become renters not to the state but to private owners.¹⁶ Not only would this process require years of bureaucratic effort (verifying former ownership claims and negotiating among often multiple claimants and their descendants) but also, in social terms, so-called “forced renters” would often be pressured to leave these homes so that restituted owners could undertake renovations or develop their properties for more profitable gain. In theory, this kind of housing transformation was supposed to help revive real estate as such and make it more productive (especially in downtown urban areas). However, in reality, it came at the cost of considerable social disruption. In many cases, municipal authorities lacked alternative housing for such forced renters. Controversy would also flare over whether émigrés would be allowed to get back property abandoned decades earlier; in Estonia and Latvia they would, in the Czech Republic and Lithuania not. Politically, the issue would remain charged for many years.

This was one reason why some governments such as Lithuania, Hungary, and Poland opted for more restrictive rules, such as offering claimants only compensation, especially if the prior dwelling, commercial enterprise, or land had since been substantially changed or privatized. In legal terms, this was justified as still constituting justice, since property rights were construed as meaning a right to a certain value or good, and not an absolute right to a particular object. Restitution could therefore also take the form of privatization vouchers or other certificates, which could be used for the purchase of alternative property. Lastly, property restitution policy often shifted over time, as different governments would attempt to either speed up or slow down these processes depending on their political persuasion. At the same time, the courts often stepped in to maintain some kind of consistency in the process. Hence, Lithuania’s courts would stymie conservatives’ attempts to expand restitution efforts in the late 1990s, while Estonian courts would often side with former owners even after lawmakers in that country sought to curtail some of the restitution provisions.

A final area of contention concerned religious property. In many countries, officials had to negotiate extensively with the Catholic Church concerning the return of not only churches, but also agricultural lands and other property. Likewise, the restitution of Jewish property that had been seized or abandoned as part of the Holocaust but that had never been returned or compensated by the subsequent communist authorities was very difficult. Many Central and East European countries were reluctant to take on these claims, arguing that, in most instances, the individual claimants were no longer citizens or residents of these countries and were therefore ineligible under existing law. Furthermore, many governments demurred on recognizing Jewish community property, especially if it pertained to social welfare establishments like hospitals or schools. Lastly, acknowledging Jewish claims in cities like Warsaw, Vilnius, or Riga promised to open up large swaths of property to either restitution or expensive compensation. A number of international associations such as the World Jewish Restitution Organization put pressure on

governments to resolve these issues. In 2011, Lithuania passed a special law on “good will compensation,” allocating over \$50 million over a ten-year period to a special restorative fund. Efforts to pass similar legislation in Latvia and Poland have failed.

SYMBOLIC-REPRESENTATION JUSTICE: TRUTH-SEEKING AND RECOGNITION

A final cluster of transitional justice measures represents those actions that are seemingly of mere symbolic value in that they do not impose tangible punishment on perpetrators nor offer reparations to victims. However, they do play a substantive role in determining society’s overall understanding of its past or they contribute to individual truth revelation, healing, and/or reconciliation. Again, we can divide these measures in terms of their focus on perpetrators and victims, though often measures in this field will cover both groups.

Almost all countries of Central and Eastern Europe have periodically adopted parliamentary or other solemn declarations condemning their prior communist regime.¹⁷ For example, in 1991, the Czechoslovak Federal Assembly issued a statement on the 1948–1989 period of “non-freedom” through which it characterized its former government as having systematically violated human rights and its own laws. This stance was reaffirmed in 1993 after the Velvet Divorce, when Czech legislators adopted a new “Act on the Illegality of the Communist Regime and Resistance to It.” In that document, the parliament specifically listed ways in which the regime had suppressed people’s free will, violated human rights, restricted property rights, and committed other crimes and abuses. Moreover, the Act asserted that “[t]hose who implemented the Communist regime as officials, organizers, and agitators in the political and ideological sphere, are fully responsible for the[se] crimes.” Later, a group of opposition MPs contested the Act in the Czech Constitutional Court, claiming that the Act established an illegal principle of collective guilt vis-à-vis former communists. Interestingly, the Court rejected that appeal, saying, “The constitutional foundation of a democratic State does not deny the Parliament the right to express its will as well as its moral and political viewpoint by means which it considers suitable and reasonable within the confines of general legal principles.”¹⁸

Some years later, the Slovak parliament passed a similar resolution decrying the “immorality and illegality of the communist system,” while Bulgaria denounced its erstwhile Communist Party for (among other things) “purposefully and deliberately ruining the values of European civilization . . . the moral and economic decline of the State . . . [and] employing permanent terror against people who disagree with the system of ruling.”¹⁹ At the same time, a statement denouncing the role of the Slovenian Communist Party in sustaining the erstwhile Yugoslav regime failed to pass the Slovenian parliament in late 1997.²⁰

In the Baltic states, such declarations have been even more poignant, as they have generally blamed a specific country, the Soviet Union, for their communist suffering. In this respect, the Balts have largely externalized their condemnation of communist rule onto the USSR—and by implication to the Russian Federation as the successor state to that one-time occupier. As the Latvian parliament declared in 1996,

[t]hroughout the occupation, the Soviet Union conducted a targeted genocide against the Latvian people, in breach of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948. The occupation regime killed innocent people, carried out several mass deportations and other repressive policies, cruelly punished those, who with or without arms fought for the restoration of Latvian independence, and unlawfully expropriated Latvian citizens without compensation and suppressed freedom of expression.²¹

In many instances (such as the Czech Republic instance mentioned above), political declarations have also sought to laud resistance fighters and dissidents against the regime or have otherwise drawn attention to the victims alongside condemning the perpetrators. Sometimes these declarations have also been the start of the rehabilitation procedures described earlier.

Still another approach to identifying perpetrators and victims in the national psyche is through truth commissions and other bodies, where the past is researched, discussed, and clarified. Although no country in postcommunist Europe established the kind of public truth commission pioneered famously in postapartheid South Africa, many countries began the process by convening special parliamentary commissions to study individual periods of repression, such as Poland during the 1981 military crackdown, Hungary in 1956, and Czechoslovakia in 1968.²² A special Bundestag Enquête Kommission conducted more systematic examinations of regime abuses in Germany, and a comparable multiyear inquiry was conducted by the Slovenian parliament in the early 1990s.

Even more broadly, a number of countries appointed commissions made up of historians, cultural figures, and other prominent individuals to examine the crimes and legacies of these regimes in societal terms. Often known as “historical commissions,” such bodies were established in Estonia, Latvia, Lithuania, and, later, Romania.²³ In Estonia, the “State Commission for the Examination of Repressive Policies Carried Out During the Occupations” was launched in March 1992, barely six months after the reestablishment of independence.²⁴ It was also one of the longest standing bodies, operating until 2005. While its focus was mostly historical (looking into the “crimes of genocide” committed by the Nazi German and Soviet regimes), one of its lasting legacies was to publish extensive lists of victims of the Soviet deportations during the 1940s. A second group of historical commissions was created in the Baltic states during the late 1990s, when external pressure from international Jewish organizations and the United States succeeded in getting the countries to establish new truth bodies (mostly composed of historians) that would investigate both the Holocaust and Soviet repression in these states. Although each of the Baltic commissions was distinctive in terms of its composition and its operating style, they were all tasked with helping to identify both perpetrators and victims during the half-century of foreign rule in these countries.²⁵

By contrast, the Presidential Commission for the Analysis of the Communist Dictatorship in Romania was established much later (in 2006) and was a more political body aimed at discrediting the former Ceaușescu regime in the face of repeated returns to power by ex-communist parties during the 1990s and early 2000s. The commission’s final report constituted an extensive investigation into the inner workings of both the erstwhile secret police, the Securitate, and the communist party, arriving at the conclusion that in many respects the regime had committed “genocide.” Nevertheless, the public

impact of the commission and its report was limited, with few of its recommendations ever implemented.²⁶ Far more successful was the 2003–2004 International Commission on the Holocaust in Romania, led by Elie Wiesel. Its final report contributed to much more public awareness, including the creation of a Holocaust commemoration day.

In many respects, the most direct pathway to truth revelation came through the opening of former regime archives, both in relation to former wrongdoers and their victims. The most innocuous version of this approach was to allow individuals to see whatever information the former secret services had collected personally to them. This was often of importance to those who had been repressed, arrested, or deported. While the names of former security agents or other related individuals would usually be blacked out, it would still be possible for citizens to discover what the regime had once thought about them or undertaken against them. The pioneer in this kind of openness was Germany, where the *Stasi-Unterlagenbehörde* organized free access to almost all of the former GDR's secret files for anyone interested in viewing them.

At the same time, any kind of transparency in terms of former secret archives often brought stark public conflicts when insufficient systems had been put in place for lustration. A case in point was Slovenia, where lawmakers failed to pass lustration legislation in 1997 and just a few years later a Slovene diplomat, Dušan Lajovic, made public on the internet a database of more than one million files from the Slovene branch of the Yugoslav secret police, the UDBA. Yet, because the files were simply a listing of all individuals who had ever come under the agency's purview (including common criminals), it was impossible to tell whether any single person named in the files had actually had a more specific or suspect relationship to the UDBA. Needless to say, names of prominent members from almost all of Slovenia's political parties turned up in the database, and this prompted an archetypal round of finger-pointing among the politicians. However, what is relevant here is the phenomenon of mass release of archival documents. For, a similar episode occurred in Poland, when, in February 2005, journalist Bronisław Wildstein released online a list of 240,000 people allegedly linked to the former secret services. In order to get a better handle on these potential leaks, the Lithuanian Genocide and Resistance Research Center decided to publish, on its own, historical files from the Lithuanian KGB dating back to the 1940s and 1950s. Latvia likewise decided to make its available KGB documents public in May 2018, but only after a commission of academics and experts had reviewed all of the materials.

A related question to all of this was, of course, who was taking care of the files and what kinds of government agencies have been developed more broadly to examine the communist past? Scholars have begun to comparatively analyze these organizations, finding that many of them are extremely broad in their functions and tasks.²⁷ Not only are many involved with facilitating access to files or organizing commemorative activities, but they may also be called upon to verify lustration processes, certify rehabilitation claims, or provide prosecutors with archival evidence for criminal trials against communist-era officials. The Institute of National Remembrance in Poland, known under its Polish abbreviation IPN, is a vivid example, as it has departments not only for historical research and national education, but also for vetting government officials and for "the prosecution of crimes against the Polish nation." It has more than a dozen regional offices and delegations, totaling more than a thousand employees. Likewise in Lithuania, the Genocide and Resistance Research Center is involved in all aspects of transitional justice

and memory work. Meanwhile, almost all the countries of the region have prominent museums portraying the history of the communist period, be it the House of Terror in Budapest, the Occupation Museum in Riga, or the Sighet Museum in Romania.

It is, therefore, no surprise that these commemorative efforts have increased particularly during the 2000s, since the process of dealing with the communist past has begun to shift from direct transitional justice policies and measures to a much wider and often more diffuse process of national memory construction. To be sure, memory debates have been present in the region since the early 1990s, while controversies over certain politicians' communist pasts will surely arise again in the future. However, the broad proportion of these phenomena has slowly begun to invert.

Social Memory, Master Narratives, and “Memory Wars”: New and Old Battlegrounds

“Memory” is a term whose use has grown exponentially in the social sciences over the last two decades. It can be deceptive, however, in the sense that it no longer tends to mean only what people remember in their mind, but also what entire nations see as their history or their self-perceptions of who they are in historical terms. It is, therefore, often very difficult to pin down what is studied under “memory” and, by extension, the “politics of memory.” For our purposes, we will examine this phenomenon as it relates to transitional justice. In many respects, the two are comparable: the kinds of truth and justice measures that a nation seeks will depend on how people view the past repression of a regime. So, in a sense, memory molds transitional justice. If the regime was seen as being soft (as is often said of Hungary), less transitional justice will be needed. At the same time, transitional justice measures can also begin to craft national memory when lustration laws, for instance, begin to reveal just how many people were involved with the old system, or when historical commissions are tasked to form an official assessment of a certain event. Even courts are part of national memory construction when they issue verdicts in relation to former regime perpetrators and thereby hand down a kind of judicially certified version of repression history.

In this section, we will therefore study how transitional justice and memory are often intertwined. We will look at how memory issues were present already at the beginning of the democratic transitions, but also at how they have grown in importance, as the communist era has itself become more distant history. Measures that are, formally speaking, part of transitional justice increasingly have an effect on crafting historical understandings as well, in particular for younger generations who have had less or no personal experience under the communist regime. As the thirtieth anniversary of the collapse of communism approaches, there is debate not only about what communism once was, but also about how it collapsed and who played what role in that process. Indeed, even the first elements of transitional justice undertaken in the 1990s are slowly becoming subject to memory contestation.

When we go back to the heady days of 1989, we see that memory was already very much at the forefront of the democratic revolutions, accentuating the wide array of other grievances against the regimes with respect to failed economic performance,



Photo 6.2. The Three Crosses Monument, also known as the Solidarity Monument, was put up in December 1980 after the Solidarity Trade Union had been legalized. It commemorates the shipyard workers killed during the 1970 shipyard workers' strikes when the government attacked the striking shipyard workers as they marched outside the shipyard. This monument is now at the entrance to the Solidarity Center in Gdansk. (Aurora Zahm)

environmental devastation, or social alienation. Long neglected or silenced experiences of the early communist period, including occupation, mass arrests, extrajudicial executions, deportations, and show trials, poured into the open and stoked a large part of the rejection of the communist regimes once liberalization occurred in the mid-1980s. In Poland, stories about the mass shooting of officers by the Soviets in Katyń had been part of family narratives and later dissident political activities ever since the 1970s. In the Baltic states, details slowly emerged about the scope and significance of having lost independent statehood in 1940 and then being subjected to Stalinist deportations. For Czechoslovakia, the fateful dates of 1938, 1948, and 1968 became rallying cries of the Velvet Revolution and served as an important empowerment for those calling for change.

Yet, historical memory also emerged as a divisive element in these turbulent times of regime change. The most ominous case was the former Yugoslavia where the ideas and symbolism of the Serbian *Chetnik* and Croatian *Ustasha* extreme-right organizations experienced a revival and provided nationalists with “weapons of destruction” to fuel already simmering interethnic tensions in the region.²⁸ Likewise, reemergent memories of interethnic violence and of forced resettlement after border shifts between, for example, Poland and its neighbors Lithuania and Ukraine had potentially destructive power.

The question of how to remember the history of a twentieth century that had been in an ideological straightjacket for decades was thus crucial and highly political in the postcommunist processes of democratization and state-building. Through public commemoration, the rewriting of textbooks, the renaming of spaces and streets, the creation of new museums, and numerous other acts, these countries sought to reclaim power over their recent history. The outcome of this process was generally a past reframed into one of national victimization and oppression. On the one hand, this narrative served an important political purpose of providing a sense of unity in times of economic hardship and political instability. It helped to get over some of the social atomization that the communist regime had promoted and developed a sense of purpose as the countries faced a new era of rebuilding. At the same time, it often swung the pendulum of national memory very starkly in a nationalist direction, to the chagrin of not only certain minority groups in these same countries but also more broadly in Europe and internationally. A recent example could be witnessed in Ukraine, where decommunization legislation in 2015 led to the dismantling of Soviet-era monuments, street renaming, and a rather aggressive rewriting of World War II history.

One of the most blatant memory tools at the disposal of states is to adopt laws criminalizing the denial, condoning, or gross trivialization of certain historical events. While such laws have long existed in many European countries in relation to the Holocaust, a number of Central and East European nations have complemented this domain with so-called “memory laws” (*lois mémorielle*) concerning Stalinism and communism. Hence, Poland incorporated within its 1998 law creating the IPN, a provision allowing for up to three years of imprisonment for “anyone who publicly and contrary to the facts denies” communist and Nazi crimes (Art. 55). The Czech Republic issued a similar law in 2001, as have Slovenia, Latvia, and Lithuania. In addition, some countries (Lithuania, Poland, Hungary, and Romania) have sought to ban the public display of communist symbols such as the hammer and sickle (alongside the swastika).

Another element worth noting in relation to memory processes (and in partial contrast to transitional justice) is that they have not always been top-down or imposed by government. Nonstate actors have also been instrumental in fostering public memorialization of the entire communist era as criminal. In the Baltic states, and especially in Lithuania, former deportees and repressed people constituted a strong voice in the national conservative political camp, seeking to advance a staunch anti-communist narrative of national suffering and heroism through education and other public activities. Moreover, one such nonofficial activity involved organizing international public tribunals that would feature legal experts from different countries who would reexamine the crimes committed by the regimes and evaluate communist ideology from a legal perspective. The first such tribunal took place in Vilnius in 2000, organized by civil society organizations and supported by several public figures, resulting in a “judgment” that would condemn communism as a criminal doctrine responsible for, among other things, genocide and crimes against humanity. A similar citizen tribunal was held in 2006 in Cluj, Romania. Although these bodies lacked any formal legal standing, they sought to use the terminology of international criminal and humanitarian law in order to influence national narratives of the communist regime and of national victimization.²⁹

Yet, delving into the past has meant not only revealing communist regime crimes, but also shedding new light on the mass killing of Jews and other minorities during the war in this region that Timothy Snyder would later term the “bloodlands” of Europe. Already in the early 1990s, the emerging master narratives of national victimhood and the overarching tendency in public commemoration and historical writing to externalize responsibility for any past wrongdoing clashed with tales of local collaboration with Nazi perpetrators, of locally initiated anti-Jewish pogroms, and of killing squads involved in the mass shooting of civilians, especially Jews. In some cases, the realization of long-neglected historical truths about local complicity in the extermination of Jewish life in the region gave birth to painful, yet ultimately healthy, public debate and national introspection. Thus, the debates and new research following the 2001 publication of Jan Gross’s book about the killing of Jews in Jedwabne by their Polish neighbors constituted a genuine shift in Polish perceptions of the German occupation period. However, certain historical revelations as well as outside accusations against individual states voiced by international actors, such as the Simon Wiesenthal Centre, also provoked resistance among local populations, and the ensuing public debates and political rhetoric revealed that many anti-Semitic myths and stereotypes still existed in societal discourses. Moreover, the preoccupation of Western historians and state officials with the history and memory of the Holocaust and its local collaborators was perceived by many East European politicians and intellectuals as, at best, ignorant, and, at worst, negligent of the suffering that had been inflicted on the region by Stalin. Scholars of European and transnational memory have thus come to talk of “memory wars” (Etkind) and of “battle-ground Europe” (Leggewie), at the center of which they see the history and memory of the Holocaust and the Gulag pitted against each other in an unfortunate competition of collective victimhood that held little value for advancing knowledge and awareness about the history of World War II and its aftermath of state violence.³⁰

With the enlargement of the EU and the direct incorporation of Central and Eastern Europe into European politics, memory was transposed further onto the pan-European

level. After 2004, many of the national historical research institutes that had been involved in transitional justice along with a number of related history museums teamed up into a novel set of memory agents, who would begin appearing at EU-sponsored conferences and hearings, lobbying for European parliamentarians to acknowledge the criminal character of the communist regimes.³¹ In particular, Baltic, but also Hungarian, Czech, and Polish, members of the European Parliament were at the forefront of lobbying their colleagues to pass legislation or adopt resolutions that would condemn communism and call for Europe-wide commemoration. Eventually, the parliament adopted a pair of resolutions in which the crimes of Stalinism were condemned and remembrance pledged. The latter included the creation of a “European Day of Remembrance for Victims of Stalinism and Nazism” on August 23, the day of the signing of the so-called Molotov-Ribbentrop Pact in 1939 that divided up Eastern Europe between the two dictators.³² The EU has also financed a number of NGO projects and networks related to commemoration such as the “Platform of European Memory and Conscience.”

A second memory-related phenomenon that seemed to kick in around the 2000s was a more anthropological notion of communist nostalgia. The concept gained currency in political science as scholars sought to explain how ex-communist parties in many countries were returning to power in open elections. Later, it became an explanation for the rise of populist parties, with the conclusion being that voters were nostalgically looking for a return to social equality and order. Among other social scientists (and, in particular, social anthropologists), the study of nostalgia was embedded in the notion of postsocialism and examined memories of past everyday life. Especially among older age cohorts as well as in countries that had experienced more liberal forms of communist rule, such as in the former Yugoslavia and Hungary, a sense of “not everything was bad” seemed to exist. Yet, as numerous studies of communist nostalgia have pointed out, it is, in fact, rarely the case that people yearn for the return of the old communist system as such; rather, it has been an expression of their dissatisfaction with existing socioeconomic conditions and their perceived lack of equality in society. In this sense, nostalgia is but a label referring to what Velikonja has called “retrospective utopia”—a notion of a better life that is as much a projection into the past as it is into the future.³³

Finally, with time elapsing since the end of communism and the triumph of the democratic revolutions, the memories of that particular period have themselves become an object of contestation. In some countries, the contrasting narratives of that period continue to have a strong hold on the political landscape, as partisan leaders on the right try to frame the negotiated transitions of the late 1980s, for example in Hungary and Poland, as a betrayal of the nation by the liberal elites of that time. Thus, the 2005 lustration campaign by the Polish Law and Justice Party was less about actually changing or expanding an already existing law than it was about framing the liberal political elite of the country as corrupted by former communists. In Romania, memories of the 1989 overthrow of Ceaușescu and the subsequent takeover by a second tier of communist elites remain contested and reappear in the political discourse especially during elections. Hence, the way in which 1989/1991 is being publicly remembered tells us a lot about not only party-political cleavages, but also deeper cultural and structural undercurrents that define social and political life in this part of the world.³⁴ Politics in most of the countries that experienced peaceful revolutions in 1989 and 1991 is extremely polarized, or “fractured,”

as political elites seem to be split along seemingly irreconcilable narratives of the not so distant past. Indeed, much of the populist rhetoric of the so-called illiberal leaders in the region (such as Poland's Jarosław Kaczyński, Hungary's Viktor Orbán, or Slovakia's Robert Fico) builds on a narrative of the "incomplete revolution of 1989" and on allegations of national treason committed by the liberal, cosmopolitan elites of the early 1990s.

Conclusion

Studying politics in Eastern Europe involves examining and renaming multiple, successive layers of political development and change. The post-1945 period of communist rule is, of course, an essential starting point, but so are the subsequent regime transition, the institutionalization of democratic politics, the challenges of EU accession, and now, in some cases, the dangers of democratic backsliding. Transitional justice and memory politics fit into this landscape as accompanying processes aimed at establishing an understanding of what happened during communist rule as well as what to do about that afterward. The two phenomena begin with an overarching aspiration to bring some kind of "truth" and "justice" to this repressive past. This is why these two terms are frequently used as synonyms for everything that had to do with coming to terms with the past. However, it is clear that these two goals are, at best, very ambiguous, if not to say subjective. No matter how hard societies may try to work out different degrees of accountability and/or develop adequate forms of reparation, there will always be uncertainty about whether the full truth has been established or justice really achieved. This explains why transitional justice can also be a protracted and recurring political issue. There will probably never be a moment where all people agree that these two processes have been completed and that the books can indeed be closed. Rather, these issues remain hanging in the air, open for attachment to additional political or economic grievances, as we saw with the discussion of communist nostalgia or when making sense of the rise of Viktor Orbán in Hungary or the Kaczyńskis in Poland. Truth and justice are therefore inherently slippery phenomena, since they are largely in the eye of the beholder. As political analysts, we can, at best, try and sort out the different dimensions of this wide-ranging process. But full explanations are difficult to come by, given precisely the way truth and justice were intertwined and interact with so many other political strategies and societal issues.

Still, given that some countries have clearly engaged in greater degrees of transitional justice and memory politics than others, scholars have offered different accounts as to why this might be so.³⁵ Some point to differing communist-era historical legacies with regard to regime legitimacy as explanatory variables. Thus, in some cases, like Hungary or ex-Yugoslavia, the regimes introduced economic reforms that allowed for certain freedoms already long before the 1980s. In other cases, such as Poland or even Soviet-Lithuania, local communist elites managed to pursue successful "national communist" strategies, thereby making it feel like the communist period had perhaps not been so divisive or fracturing as to warrant extensive transitional justice.

A second explanatory level looks at how more conciliatory modes of regime transition itself led to differing degrees of interest in "pursuing justice" during subsequent years. The more negotiated the precise transition, the less radical the transitional justice process would be—not only because of a certain degree of societal reconciliation, but also because

elites from the previous regime would continue to be part of the political process and could tamp down impulses for transitional justice. So, the Czech Republic, which had a very abrupt break with the former regime, also had the most decisive array of transitional justice policies, while Poland and Hungary (with their roundtable talks during the transition) opted for milder measures vis-à-vis the past. Third, patterns of doing transitional justice have also been influenced by states' constitutional arrangements (such as the role of popularly elected presidents or the power of constitutional courts) as well as driven by the politics of the moment (electoral conflicts, institutional power games, or other political policy decisions). In other words, irrespective of prior influences, the communist past has sometimes been simply a political football for different political actors, and this too has caused the process of transitional justice and memory to ebb and flow over the last three decades. This is the framework that best explains later waves of transitional justice such as when countries decide to toughen their lustration laws or expand victim benefits. It also increasingly accounts for when memory politics comes to the fore in political discourses and mobilization strategies.

All of this goes to show that transitional justice needs to be studied not only across countries, but also over time. Not only have countries differed in comparison to each other, they have also gone up and down in terms of their preoccupation with these issues over the years. This makes finding a single approach to the phenomenon almost impossible. Everything depends on the type of comparison that is chosen. Moreover, as this chapter has sought to demonstrate, "transitional justice" as such is in reality a composite of at least three levels of policy adopted in response to either perpetrators or victims, enacted either right after a democratic transition or many years later, and aimed at redressing repressive acts committed toward the end of the former regime or going back many decades beforehand. All of these dimensions are important to map out before more specific analysis can begin.

Likewise, scholars have reflected on whether transitional justice has any kind of downstream effect on other democratic processes.³⁶ That is to say, apart from the moral ambitions of transitional justice (to achieve "truth" and/or "justice"), we can also ask whether transitional justice helps to improve elite political culture, respect for rule of law, trust in political institutions or democratic values in society. Research in this area has been inconclusive, since transitional justice is unlikely to be the sole explanatory variable for these phenomena. For example, low or high levels of trust in political institutions may be caused by other factors such as policy performance or levels of corruption. Nevertheless, this perspective on transitional justice is an important one, since it asks the broader question of what transitional justice is good for.

Finally, we have seen that transitional justice is increasingly blended with and perhaps even superseded by memory politics, since political contests are more and more about how society will remember and perceive the communist era and less about how to deal with recent crimes. Perspectives have begun to shift from how to deal with the past to how that past was dealt with. This does not imply that this debate will become wholly historical or only among historians, any more than this has happened with, say, questions of slavery and the Civil War in the United States or the Holocaust and World War II in Germany. Politics remain a crucial element in these debates, since it will influence how each nation crafts its historical identity. If communism is remembered primarily as victimhood (as many conservative parties would like), this will influence not only certain

domestic political orientations but also relations with the rest of Europe in terms of a desire to continue recasting broader European historical identity. If other, more varied narratives emerge, this may relativize the place that communist and transitional justice will hold in Central and East European politics.

Study Questions

1. What forms and dimensions of transitional justice can we find in Central and Eastern Europe?
2. What controversies and problems have emerged after transitional justice measures have been implemented?
3. How do you think communism should be remembered in the national memories and/or histories of the countries of Central and Eastern Europe?
4. What relevance do these stances have for today's political development in the region?

Suggested Readings

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Notes

1. Because of our focus on *postcommunist* transitional justice, we will not cover in this chapter transitional justice processes related to the ethnic (or civil) war in many parts of former Yugoslavia. While it is true that a number of the truth and justice measures that have been undertaken vis-à-vis

these conflicts (such as legal trials against war criminals or the memorialization of victims) are similar to the measures we outline here, in many instances they have also been linked to international criminal law (the International Criminal Tribunal for the former Yugoslavia, ICTY) or they have become internationalized political issues (serving as conditionality elements for European Union accession). The type of postcommunist transitional justice that we examine here (i.e., in relation to former communist leaders and the former communist regime) has been very limited in countries such as Croatia, Serbia, Macedonia, or Bosnia-Herzegovina.

2. Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).
3. In Slovenia, too, resurgent center-right parties tried to pass different transitional justice measures in the late 1990s, but each time they failed to get a requisite majority in parliament.
4. Claus Offe, "Coming to Terms with Past Injustices," *European Journal of Sociology* 33, no. 1 (1992): 195–201; Neil J. Kritz, "The Dilemmas of Transitional Justice," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes. General Considerations*, ed. Neil J. Kritz (Washington, DC: US Institute of Peace Press, 1995), 1: xix–xxx; and Noel Calhoun, *Dilemmas of Justice in Eastern Europe's Democratic Transitions* (New York: Palgrave Macmillan, 2004).
5. Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective*; and Muriel Blaive, "The Czechs and Their Communism, Past and Present. In Inquiries into Past and Present," in *IWM Junior Visiting Fellows' Conferences, Vol. 17*, ed. D. Gard et al. (Vienna: IWM, 2005).
6. Frigyes Kahler, "Communist Terror in 1956 and the Rule of Law," *Hungarian Review* 4, no. 1 (2013): 49–62.
7. See also Roman David, "From Prague to Baghdad: Lustration Systems and Their Political Effects," *Government and Opposition* 41, no. 3 (2006): 347–72. For an explanatory model of lustration based on institutional rules and strategic interaction, see Monika Nalepa, "The Institutional Context of Transitional Justice," in *Routledge Handbook of Comparative Political Institutions*, ed. Jennifer Gandhi and Ruben Ruiz-Rufino (Oxon: Routledge, 2015), 389–403.
8. Mark S. Ellis, "Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc," *Law and Contemporary Problems* 59, no. 4 (1997): 181–96; and Robert C. Austin and Jonathan Ellison, "Albania," in *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, ed. Lavinia Stan (London: Routledge, 2009), 176–199.
9. Eva-Clarita Pettai and Vello Pettai, *Transitional and Retrospective Justice in the Baltic States* (Cambridge: Cambridge University Press, 2015).
10. For accounts regarding the Polish case, see Matt Killingsworth, "Lustration after Totalitarianism: Poland's Attempt to Reconcile with Its Communist Past," *Communist and Post-Communist Studies* 43, no. 3 (2010): 275–84.
11. Cynthia Horne, "'Silent Lustration': Public Disclosures as Informal Lustration Mechanisms in Bulgaria and Romania," *Problems of Post-Communism* 62, no. 3 (2015): 131–44.
12. Cynthia M. Horne, "Late Lustration Programmes in Romania and Poland: Supporting or Undermining Democratic Transitions?" *Democratization* 16, no. 2 (2009): 344–76; and Kieran Williams et al., "Explaining Lustration in Central Europe: A 'Post-Communist Politics' Approach," *Democratization* 12, no. 1 (2005): 22–43.
13. Roman David and Susanne Y. P. Choi, "Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic," *Human Rights Quarterly* 27, no. 2 (2005): 392–435; and Lavinia Stan, *Transitional Justice in Post-Communist Romania* (Cambridge: Cambridge University Press, 2013).
14. The issue of reparations for Soviet-era damages remains a highly contentious issue in Baltic-Russian relations. Both Latvia and Lithuania have put together detailed compensation claims to the Russian Federation, something that Moscow has dismissed outright.
15. Csilla Kiss, "Hungary," in *Encyclopedia of Transitional Justice*, ed. Lavinia Stan and Nadya Nedelsky (Cambridge: Cambridge University Press, 2013), 2: 230–6.

16. Mark Blacksell and Karl Martin Born, "Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe," *Geographical Journal* 168, no. 2 (2002): 178–90; Lynn M. Fisher and Austin J. Jaffe, "Restitution in Transition Countries," *Journal of Housing and the Built Environment* 15, no. 3 (2000): 233–48; and Csongor Kuti, *Post-Communist Restitution and the Rule of Law* (Budapest: Central European University Press, 2009).

17. In this subsection, we will concentrate on declarations that specifically condemn a country's former communist party or ruling elite as opposed to communism as an ideology or social system. Given the distinction we are seeking to make between transitional justice and memory, we see the denunciation of former rulers as part of the former, while the censure of communism is seen as the latter.

18. Full text in Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes. Laws, Rulings, and Reports* (Washington, DC: US Institute of Peace Press, 1995), 3: 428–31.

19. Nadya Nedelsky, "Czechoslovakia, and the Czech and Slovak Republics," in *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, ed. Lavinia Stan (London: Routledge, 2009), 37–75. National Assembly of Bulgaria, "Law on Declaring the Criminal Nature of the Communist Regime in Bulgaria," May 5, 2000.

20. Tamara Kotar, "Slovenia," in *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, ed. Lavinia Stan (London: Routledge, 2009), 200–21.

21. Latvijas Republikas Saeima, "Deklarācija 'Par Latvijas Okupāciju,'" August 22, 1996.

22. Timothy Garton Ash, "Trials, Purges and History Lessons: Treating a Difficult Past in Post-Communist Europe," in *Memory and Power in Post-War Europe: Studies in the Presence of the Past*, ed. Jan-Werner Müller (Cambridge: Cambridge University Press, 2002), 265–82.

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