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## How to Reckon with Past Evils? Rethinking Transitional Justice Strategies in Post-Authoritarian and Post-Conflict Environments

The Łódź PPSY International Seminar *Transitional Justice: Between Redemption and Retribution*. Łódź (June 6, 2017), University of Łódź, Professor Czesław Mojsiewicz International Cooperation Fund and the Editorial Board of the *Polish Political Science Yearbook*

The Łódź PPSY International Seminar *Transitional Justice: Between Redemption and Retribution* was the first scientific event co-organized by the Chair of International Law and International Relations (Faculty of Law and Administration, University of Łódź), Research Centre of University of Łódź “The Balkans at the Turn of the 20<sup>th</sup> and the 21<sup>st</sup> Century”, Professor Czesław Mojsiewicz International Cooperation Fund, Adam Marszałek Publishing House and the Editorial Board of the *Polish Political Science Yearbook*. The idea that stood behind the organization of the academic seminar was to analyze the current scientific and practical trends witnessed in a global discourse on transitional justice. Deliberations on post-violence efforts and all closely related topics, especially the issue of politics of memory, gathered in the Polish city of Łódź 20 researchers, coming from 7 Polish universities and 8 foreign academic centers. It is worth mentioning that participants of the seminar represented 9 different countries, such as Germany, The Netherlands, Poland, Romania, Slovakia, South Sudan, Ukraine, United Kingdom and the United States.

During the short opening ceremony, Prof. Agnieszka Liszewska, the Dean of the Faculty of Law and Administration, University of Łódź, welcomed all participants, while Prof. Joanna Połatyńska, the Professor of the Chair of International Law and

International Relations of the same Faculty, addressed the significance of transitional justice discourse for all post-authoritarian, post-conflict and post-revolutionary societies, strongly indicating the role of international law as a clear marker of setting the boundaries of particular transitional justice strategies. Prof. Połatyńska underlined the visible changes of the concept of transitional justice since its emergence in the early-1990s to evaluate the rapid socio-political changes in Eastern and Central Europe: firstly, the inclusion of post-violence dilemmas raised by not only post-authoritarian, but also war-torn societies at the turn of 20<sup>th</sup> and 21<sup>st</sup> century; secondly, internationalization of transitional justice with the assistance provided by international actors, such as the involvement of the International Criminal Court (ICC) in conflict or post-conflict scenarios; and finally, widening the scope (and type) of mass atrocities being under the transitional justice mechanisms' scrutiny (from violations of solely civic and political character to infringements of economic, social or even cultural dimension).

The main part of the seminar began with the speech of Dr Michał Krotoszyński (Adam Mickiewicz University in Poznań, Poland) on theoretical framework and possible definitions of transitional justice. Dr Krotoszyński emphasized that even though transitional justice processes are rather conducted by the affected state (society) itself, all post-authoritarian or post-conflicts efforts have to meet requirements set by international law (for instance, the obligation of states to prosecute and punish international crimes, such as genocide, crimes against humanity or war crimes) and the value of rule of law (*Rechtsstaat* in a continental Europe). Otherwise, methods applied in a context of rapid socio-political change shall be construed as revolutionary, thus, mostly unlawful in terms of international law and leaving out of range of the current understanding of transitional justice (as was historically observed in the Bolshevik Russia after 1917). The second speaker, Dr Andrew Campbell of the Indiana Institute of Technology (the United States) studied the impact of a global leadership in delivering international justice, mainly at the level of international or hybrid international criminal tribunals. The American scholar argued that personal features and charisma of main actors, for instance, judges or prosecutors working for the ICC, are constantly affecting the institutional decision-making process, like the policy of case selection and prioritization by the Hague-based Court. The following panellist, Prof. Edyta Pietrzak (Łódź University of Technology, Poland), attempted to determine the significant role of a (global) civic society in transitional justice efforts undertaken by certain post-violence states (for example, by human rights activists or groups of victims, trying to restore their position in fragile or fragmented societies). The first panel was finalized with a presentation of Dr Aleksandra Gliszczyńska-Grabias and Dr Grażyna Baranowska, representatives of Polish Academy of Sciences,

who addressed the issue of right to truth and memory laws. Both researchers are involved in the international scientific project called “Memory Laws in European and Comparative Perspectives” (MELA Project), a four-nation, EU-sponsored consortium gathered to examine memory laws in Europe and the world. During the Łódź PPSY Seminar, Dr Gliszczynska-Grabias and Dr Baranowska concentrated their thoughts on memory laws applied in Poland, Russia and Ukraine, examples of domestic statutes related to the trauma and interpretation of the II World War. As it was stated, all abovementioned states are trying to shape the politics of memory, firstly, by glorifying their own national heroes (very often even without a hint of criticism) and secondly, by condemning the war efforts of their neighbours. Thus, memory laws, when used as a political weapon, may lead to the dangerous instrumentalisation of history, implemented solely for the internal political reasons.

The last speech of the previous panel created in fact a great link to the presentations gathered in the following segment of the seminar, mainly devoted to the issue of politics of memory within the transitional justice efforts of certain post-authoritarian and post-conflict societies.

This part of the conference began with the speech of Prof. Susanne Buckley-Zistel, a renown political scientist from Philipps University Marburg (Germany). In her presentation, Prof. Buckley-Zistel noticed different aspects of the politics of memory, notably focusing on the creation of memorials as an example of the organization of collective memory by different post-violence states. This topic was prolonged by the next panellist, Dr Dagmar Kusa, representative of the Bratislava International School of Liberal Arts (Slovakia). Dr Kusa compared the situation of the post-Apartheid South Africa and post-communist Slovakia, indicating the recent radicalization of younger generations, very often rejecting the outcomes of successful transitions from repressive rule to democracy in both countries. This visible sociologic trend affected the discourse of the politics of memory in South Africa and Slovakia with the postulate of revising ‘the management of the collective memory’ by both states. Furthermore, the attitude of the current ruling party in Poland, Law and Justice (PiS), to the question of the legacy of communism, was presented by Mr Mateusz Maciej Mazzini (University College London, the United Kingdom). The British scholar outlined that the recent anti-democratic policies provided by the PiS government are rooted in the strong will of rewriting the newest history of Poland by replacing the ‘old heroes’ of the democratic opposition movement named ‘Solidarity’ (starting from Lech Wałęsa) by people connected solely to the today’s Law and Justice party. Discussions over the issue of collective memory were concluded by Dr Jakub Gortat (University of Łódź) with his address on the figure of Fritz Bauer, a German judge and prosecutor – who played essential role in holding in the time of mid-1960s the so-called ‘Frankfurt

Auschwitz trials' against the perpetrators of Holocaust crimes – and his perception in the German society throughout the last five decades.

The third panel of the seminar was devoted to the current challenges of the transitional justice process in Ukraine – a state trying to craft its own strategy of reckoning with the regime of ex-President Viktor Yanukowych and a Soviet legacy (a consequence of the Revolution of Dignity of 2013/2014) in conditions of the international armed conflict in Donbas (as a result of the combination of direct and indirect aggression of the Russian Federation, with the use of the pro-Russian separatists in the East of Ukraine).

The first speaker, Dr Igor Lyubashenko from the SWPS University (Poland), compared the issue of fighting against corruption in two post-Soviet republics: Georgia and Ukraine as a key factor of potential success of transitional justice efforts. It was argued that structural corruption effectively prevents the possibility of a full lustration and replacement of disgraced elites, building civic trust to the state organs, as well as providing the institutional reforms in the crucial justice sector. The question of lustration was extended by the next panellists, Mr Vitalii Mazurenko, representative of the John Paul II Catholic University of Lublin (Poland). Mr Mazurenko analysed the Ukrainian 2014 Law on Government Cleansing by revoking the 2015 Opinion of Venice Commission (of the Council of Europe) on the Ukrainian screening of the former officials. It was pointed out that the 2014 Lustration Law is not inconsistent with international law *per se*, however it needs some improvements in the area of full protection of human rights of individuals being under legal scrutiny of administrative justice. Presentation of the following speaker, Dr Tomasz Lachowski (University of Łódź), touched the issue of an ongoing armed conflict in Eastern Ukraine and the possible models of reintegration of Donbas within the transitional justice paradigm. Dr Lachowski reiterated the experience of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and numerous disarmament, demobilisation and reintegration (DDR) programs, applied in conflict and post-conflict scenarios, that – at least to some extent – may be adjusted to the Ukrainian case. Furthermore, as it was stated, in order to restore the full control of Kyiv over the temporarily occupied territories of Donbas, Ukraine shall definitely not abandon the policy of criminal trials (with the assistance of the ICC) against the perpetrators of international crimes committed during the analysed armed conflict, although some of the amnesty provisions (or truth and reconciliation methods) may be implemented in order to reintegrate the divided society. The last panellist, Alexandra Morehead, representing the Harvard University (the United States), joined the seminar discussion via Skype connection. Ms A. Morehead focused on the historical memory of the 1943 Volhynia massacre, a heinous crimes that Poles claim to be an example of

genocide of the Polish inhabitants of the Volhynia and Eastern Galicia (Halychyna) regions committed by members and supporters of the Ukrainian Insurgent Army (UPA), while Ukrainians generally argue for the legal qualification of mutual ethnic cleansing. Undoubtedly, having in mind that many gestures of reconciliation around the Volhynia events have already occurred, the question remains whether Warsaw and Kyiv shall implement some of the common truth-seeking and truth-telling instruments at present due to the fact of a recent strong politicization of the ‘Volhynia discourse’ in both countries.

The fourth and last panel of the seminar gathered scholars discussing the variety of examples of different transitional justice strategies around the globe. Firstly, Ms Raluca Colojoară from the West University of Timisoara (Romania) revealed the unsolved problem of reckoning with past communist evils in Romania. Then, Ms Elif Durmuş (Leiden University, the Netherlands) presented the problematic Kurdish peace process in Turkey by arguing that some of the transitional justice mechanisms (especially the truth and reconciliation initiatives) need to be implemented in order to de-escalate the ongoing (military) semi-frozen internal conflict between the Turkish authorities and the Kurdish minority. Finally, Dr Agnieszka Szpak from the Nicolaus Copernicus University (Poland) addressed the precondition of the inclusion of some tribal and traditional justice mechanisms in the post-violence scenarios, involving indigenous people. Dr Szpak emphasized the examples of *Gacaca* courts in Rwanda and *bashingantaha* in Burundi as controversial, but useful mechanisms, helping the promotion of the so-called local ownership of transitional justice processes by the affected war-torn traditional societies.

Last but not least, Dr Rowland Cole (United Nations Development Program, South Sudan), Dr. Magdalena Reksć (University of Łódź) Prof. Joanna Marszałek-Kawa, Dr. Patryk Wawrzyński and Mrs Alicja Stańco-Wawrzyńska (Nicolaus Copernicus University), presented posters related to their areas of research. Dr. R. Cole described the necessity of implementing some of the transitional justice instruments in South Sudan that may foster peace process and stabilization of the youngest African state, Dr. M. Reksć underlined the difficulty of building collective memory in different post-war states of Western Balkans, while researcher of the Nicolaus Copernicus University unveiled their research outcomes on the general interception between transitional justice tool-kit and the politics of memory in the post-authoritarian environment.

*Transitional Justice: Between Redemption and Retribution* was one of the first initiatives organized in Poland that gathered domestic and foreign experts working on transitional justice, coming from legal and political sciences, as well as the area of sociology and history. During the closing ceremony, members of the Organizing

Committee, Dr Tomasz Lachowski, Dr Magdalena Reksć and Dr Patryk Wawrzyński ensured that this special academic event, held in Łódź (Poland), is expected to form an annual scientific forum on transitional justice in the region of Central and Eastern Europe.

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