

Transitional Production of Knowledge For Civic Trust and Social Integration: Social Science in the Transitional Justice Process

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Abstract

This article aims to show that transitional justice should be understood extensively, going beyond the legal-criminal view (transitional justice in the narrow sense). The main argument of research is that social sciences offer a prepared methodological set, without which it is impossible to study these processes effectively, and thus it is impossible to carry out effective social reform, what the cases of some countries show. More and more often, this is said about the significant role of reconciliation, building social trust and social cohesion, achieved through extra-legal means, using non-judicial mechanisms. The author intentions to highlight the rooting of transitional justice in this broader sense in social sciences and outline the relationship between truth and political regimes, explaining the dynamic relation of truth-knowledge to political power, but also to highlight the issue of overcoming the problematic universality of transitional justice.

Keywords: Transitional Justice, Social Sciences, Transitional Society, Knowledge, Power.

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Introduction

Transitional justice is a relatively new field of research. At the same time, the term is used in many fields, in many contexts and situations. In general, transitional justice is a term that encompasses a wide range of instruments that serve the ethical and political break with the undemocratic past and its settlement. We can call this goal short-term because, in the long run, the goal is to remove divisions in society and overcome distrust at the regional and national social level. Of course, this is a perfect assumption, in the ideal case. Ideally means, when transitional justice and peacebuilding are deeply connected, both in practical and discursive terms.

A particular interest in transitional justice appeared in the second half of the twentieth century, in the era of decolonisation and the fall of violent regimes in Europe, Latin America and South Africa. An essential element of the development of transitional justice processes was also the fall of the communist bloc and the development of democracy in the countries of Central and Eastern Europe after 1989, the universalization of human rights discourse, the breakdown of great empires, and the processes of globalization that influenced the search for identity (Czarnota, 2003).

What do we mean by transitional justice and how does it differ from ordinary justice? In what way does “transition” individually qualify it? What are the relationships between transitional justice and social sciences and what does it mean to create knowledge and discover the truth in this process? This article aims to answer these questions.

Transitional Justice and Social Sciences - Inextricably Linked

A painful past is an analytical category that defies all rules. Indeed, it cannot be dealing with only using typical legal tools, while leaving methods and categories characteristic of history or political science at the site de. Finally, will history alone and political science be enough to cope with the complicated past? The answer to this is the

transdisciplinary scientific direction of transitional justice. Its base is the legal argument regarding the settlement of human rights violations in the past, but this field offers a multidisciplinary space not only for international criminal law, other branches of substantive law, but also for theology, philosophy, and ethics. Therefore, broadly understood studies on the justice of the transitional period cover a broad landscape and are a meeting place for jurisprudence, law, criminology and other social and psychological sciences, as well as culture studies.

The notion of transitional justice in the meaning of Secretary General of UN “comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting, and dismissals, or a combination thereof” (UN Security Council, 2004).

Transitional justice process in the traditional (narrow) sense is a kind of backward-looking justice. However, the purpose of this article is to draw attention to the fact that this process can and should turn in to the forward-looking justice. Supporters of this approach emphasise that it completes in strengthening confidence in the law, especially on the part of the victims. When guilt and punishment are imposed by a valid court sentence, it is, however, a matter of the political action. One can have doubts as to whether it is justified to apply the criminal law as a settlement of injustice made by a given political system. One can also have doubts whether we will achieve true reconciliation, increase of mutual social trust or cohesion between citizens of the state through criminal law. The court judgment is not a guarantee that the perpetrator will feel remorse. Feeling this means giving a new sense to the past. The guilt against which we do not feel remorse has power over us, still generating new guilt. Repentance is what makes

a person free, and at the same time minimises the risk of revenge from the victim. It can not necessarily be achieved through criminal processes. The transformational nature of the processes of building or rebuilding society manifests itself in the fact that the withdrawal from punishment is justified if it allows for the achievement of political and social transformation. The mere identification of those responsible for violations of human rights and the disclosure of their acts causes their social stigmatisation, and thus in itself is already a punishment. On the other hand, the identification of victims and the public recognition of their sufferings increase their dignity and gives meaning to suffering (Neier, 1995, p. 180). It leads to the conclusion that this truth is the essential value, allowing reconciliation with the painful past.

In its long history, the field of transitional justice has developed and is now considered to include not only measures to account for the past, but also to improve economic growth and distribution, but also measures that are seen as linked to social, institutional and political factors that can affect economic well-being (Duthie, 2009). Here, in turn, we come to two new dimensions of this concept. On the one hand, transitional justice means mechanisms focused on the study of past violations of laws that directly preceded the collapse of undemocratic power, which is the primary motivation for the desire to reject ancient régime (transitional justice in the narrow sense). On the other hand, they can also be settlements of human rights violations away in time, i.e., long after the fall of the regime (post-transitional justice) (Lachowski, 2018). These dimensions, according to the author, are becoming visible and intertwined in Indonesia, in which the memory of many different violations of the Suharto regime is coming to the fore.

Trauma and the emotions associated with it after past conflicts evoke profound moral questions. That is why in this delicate space there is a need for sociologists who cooperate with theologians, ethicists, and philosophers. This forces confrontation with moral issues that cannot be turned off or cut off in any way. The only reflection on the

foundation of social sciences will help solve the dilemmas created. It is a debate not only about past wrongdoings, violations, and crimes. It is also a debate about forgiveness and its borders (Govier, 1997, 2010; Lamb & Murphy, 2002; Brudholm, 2008). Finally, it is also dilemmas related to cultural memory and its possibilities and limitations (Arendt, 1958/1998; Olick, Vinitzky-Seroussi & Levy, 2011), as well as post-memory (Hirsch & Spitzer, 2010), or identity dilemmas in connection with the past and the trauma of subsequent generations (implicated community) (Morris-Suzuki, 2005).

The essence of the social sciences in the process of transitional justice is also the fact that, apart from government support programs, other initiatives, such as media and cultural interventions, may strengthen - or in some cases undermine - the public response of transitional justice. Only social sciences (in conjunction with humanities) can find an answer to the question of how media and art (often using modern technologies) can be used to engage society in discussions about responsibility? How do media influence social perception and approach to the legacy of the past? To what extent is public involvement in the public sphere necessary to accelerate political transformation, which transition measures hope to promote? These questions pose considerable challenges for social science that simultaneously offer opportunities for social science research to have a real impact on people's lives (Brewer & Hayes, 2011a).

The first and primary function of these sciences, as well as all others, is the cognitive function. The second function is something that is sometimes called a practical or application function, which consists in using the achievements of science to solve specific social problems (such practical function, about various spheres of reality, also plays the majority of other sciences).

Social sciences also have an ideological function, shaping the views of people on the world and the attitude of people to various issues: political, social, religious and other. The harmonious combination of

these functions in the activity of a social researcher is not simple, but neglecting the first function, or marginalising it, undermines the quality of social sciences, their prestige and development opportunities, and weakens the ability to implement other functions reliably.

In addition to technology, social sciences allow solving the problem of social inequalities and exclusion. Rich and developing countries both face this problem. Ways of solving this problem can be developed mainly within the social sciences. Technology alone cannot handle it. The main barriers to development lie in social institutions, system solutions, and human minds, followed by technologies and other material limitations. With the largest innovation deficit and with negative consequences of this, we are dealing in institutional innovations (social innovations). Most armed conflicts occur today in countries with a low level of development. Poverty, inequality, and underdevelopment cannot in themselves cause armed conflict and human rights violations, but they can be contributory factors. The manifestation of such a deficit is, for example, difficulties in achieving the desired scope and pace of improvement of socio-economic cohesion, limiting poverty, inequality, and underdevelopment.

The category of institutions and social innovations in transitional justice is close to representatives of all social sciences. For example, during the post-socialist transformation in Poland both the conditions for the development of social research and the need for specialists in this field have changed. Social sciences became more needed than it was in the previous system. Post-communist countries became a social science laboratory. Poland is an example of the state in which the relative clean break model was applied (Eser, Arnold & Kreicker, 2001). The focus was on structural reforms (democratization and institution building, reform of the security and public safety sector, economic transformation and development of the general attitude and trust in the institutions), criminal prosecution has targeted primarily a small group of particularly serious acts committed during specific periods of the socialist era. A similar process was in the Czech Republic, Hungary, Argentina. In the

case of Poland, however, the prolonged dispute over power has delayed social and economic development.

Refraining from retaliatory punishment, countries like the Netherlands, Spain and South Africa have managed to integrate former supporters of the fallen regime into a new order, avoid destabilising conflicts and permanent divisions in society (Bachmann, 2011). In Rwanda, the criminal prosecution model was used, followed by a series of institutional and regulatory reforms to get society out of the collapse after the genocide. In Tunisia in 2013, a comprehensive transitional justice law was adopted, implementing transitional mechanisms towards stabilisation and peace after the Arab Spring, defined as a socio-political process of moving away from the dictatorship with full respect for human rights (Lachowski, 2018). Apart from the unintended consequences of democratisation and possible the vast costs of structural reforms, it should be emphasised that the compromise between justice and the need for strong development can provide the country with a faster economic and social transformation.

Transitional justice concerns, in part, institution building, development of human rights implementation structures, and further institutions that are to monitor compliance with them. However, the system of justice is only part of the institutional reform required for post-conflict society to become stable. Most of the comments on this policy objective concern political reform. This view based partly on the naive assumption existing in the literature that when the problematic policy is resolved, all other problems, including reconciliation, will find its proper place (on this topic Hayes & McAllister, 2001).

There will undoubtedly be no success in transitional justice in supporting dominant ethnic power relations or strengthening old lines of conflict or “hate speech” in public discourse, especially in the media. The importance of building a civic society for trust and social consolidation offers a transdisciplinary space for social sciences, in which they offer not only a theoretical reflection on (re)building a state,

but also emphasise the importance of a strong economy and the impact of financial policy on the survival of communities during transformation.

Transitional Societies and Social Science in Motion

Transformation is the only sure and permanent feature of the modern world:

Change is a universal and pervasive factor of social life. There is no society without change. Seemingly stable, unchanging phenomena are just cognitively frozen phases in the constant flow of social events, snapshots of the world, which, as such, never stops in its tracks. Ontologically, society is nothing else but change, movement, and transformation, action, and interaction, construction and reconstruction, constant **becoming** rather than stable **being**. The very metaphor of social life carries this message quite cogently. Life is there as long as it is lived. Society is there as long as it is changing. The dynamic perspective is the only ontologically warranted approach in sociology” (Sztompka, 2004, p. 155).

Formed in the mid-1980s, the term “transitional justice” refers to the processes by which regimes attempt to move - or pass - from conflict, authoritarianism or oppression, characterised by systematic violations of norms, to more established democratic legal systems that can protect against such conflicts in the future. During the transitions, new governments had to face profound political, economic, legal and social dilemmas, many of which were of fundamental importance to the future shape of democracies. “Transitional,” therefore, does not qualify the word “justice,” but it means “justice in times of change.” The notion of transition reflects the dynamic nature of social organisation in human societies. “Time of change” is a constitutive term here, because all actions do not only concern the past but the future. Here the law functions in the margins because it carries out the work of separation from the previous regime and integration with its successor. The transitional law has a “limited” quality because it is a law between the regimes (Teitel, 2000, p. 220).

A pessimistic approach is that transitional justice policy acts as a temporal device that allows the past to go away for the benefit of a better future, but distances that future in an indefinite deferral. So we can live now, without a past and a future, in an absolute transient present without justice. In other words, we can live by imagining the justice that will come in the present, where justice is not possible (Alvarez-Nakagawa, 2018, p. 67). The problem is also when we can talk about the transition. How do we know that we are already dealing with a completed process? There is no unambiguous answer. There is no clear distinction between transitions and “normal” period. The same applies to the terms “nation in transit” or “transitional society.”

Social sciences can give answers to the problems of transforming societies, that is, nations in a difficult transition period beyond the governments of oppressive power and democracy or beyond war and peace. “Transitional” in the context of society means that society has implemented at least one (any) justice mechanism for the transitional period. Such societies include post-authoritarian, post-conflict, and postcolonial societies. One cannot also forget about indigenous people, who are often subject to mass violations or even crimes. The broad spectrum of transitional justice in the context of building social trust and social cohesion can be summarised in three perspectives: managing post-conflict emotions, transitional justice and state-building (Brewer & Hayes, 2011a). Transitional justice is not a special kind of justice. It is just an approach to achieving justice in times of transition from conflict and/or state repression. By putting victims and their dignity first, it signals the way forward for a renewed commitment to make sure ordinary citizens are safe in their own countries – safe from the abuses of their authorities and adequately protected from violations by others (ICTJ).

Transitional justice often limits the concepts of civil society to non-governmental organisations dealing with human rights. It lacks a rigorous conceptualisation of the role that civil society plays in the

justice processes of the transition period. To a large extent, it ignores as political actors the social movements that have led to democratisation in various parts of the world and which can be considered integral to the creation of a transitional justice discourse. While transitional justice in theory and practice remains focused on traditional civil society, institutions and the state, the recent changes emphasise that changes be driven by some different entities, often using methods of organisation and repertoire of activities related to the modalities of social movements and other forms of joint action (Gready & Robins, 2017). It is required notices, some of these activities take forms related to modern technologies, bearing off from traditional media and moving to the digital world.

The specifics of transitional justice is that it is a constantly interlocking past and future. Indeed, the basic premise of transitional justice is that addressing the past is a way of building a future that is significantly better. Transitional justice tools play a symbolic role: establishing a break with the past by (confirming) confirming that certain norms and values that support them are momentous. The meaningful evasion measures of justice, it is sophisticated impunity (ICTJ). Leaving the past and doing nothing to overcome it will result in a lack of space for an agreement in which victims, perpetrators, and bystanders can learn to live together or even side by side. It means stopping the cycle of revenge and violence and understanding how hatred is rampant.

The Meaning of Social (Collective) Right to Know the Truth From Truth-Seeking and Truth-Telling to Duty to Remember

Judging perpetrators is a form of doing justice due to the specificity of criminal proceedings. Nevertheless, it leaves the issue of discovering the truth about the circumstances of infringements or repairing their consequences, which is more important than just issuing a court judgment. Meanwhile, this right to know the truth, the right to

knowledge constitutes one fundamental right in transitional justice. It relates to the state's obligation to investigate the circumstances of human rights violations and humanitarian law, duty to investigate (especially in the scope of mass killings, torture, imprisonment, forced labour). It also includes determining the fate of missing persons, informing the families of the aggrieved persons, as well as identifying the perpetrators. Judicial mechanisms in discovering the truth are often sufficient on an individual basis. However, when enforcing the collective dimension of this right, they may become unreliable, although the mere statement by the court that there has been a violation of human rights is of considerable importance. Moreover, where constructed in the juridical context, knowledge can be liberating: when the trials symbolically isolate individual wrongdoing, the larger society is redeemed (Teitel, 2000, p. 77).

Although the law is the foundation of change, its meaning is slightly different during transformation. The law constructs many different processes, including legislation, case law, and administrative measures. Transitional operational acts may include indictments and judgments, amnesty, reparations and apologies, dissemination of constitutions and reports. All these transitional practices have one thing in common. Namely, they are a way of publicly demonstrating a new collective understanding of the truth (Teitel, 2000, p. 220). The established truth has the character of social truth. Social knowledge of the past is constructed through public processes. Social knowledge about the past is built using public processes. These proceedings generate a democratising truth that helps build a sense of social consensus. These processes also have a performative character: they take a profoundly critical and transformative aesthetics - a ritual that reverses the knowledge-policy of the previous regime. During the transitional period, knowledge and power are inextricably linked, mutually constituted and constituted.

What is indispensable, truth-seeking and truth-telling mean the right of the public to get to know the history hidden by the regime, in

particular, to learn about it by young, next generations. How important it is, is the proclamation of 24 March as the International Day for the Right to the Truth Concerning Gross Human Rights Violations and the Dignity of Victims (UN General Assembly, 2011). The right to knowledge and information can be recognised differently in different countries, but its role in combating impunity in the fight for human and civil rights is hugely substantive.

Therefore, this right is recognised both as an individual and collective. Every society has the right to the truth about the motives and circumstances of aberrant crimes in order to prevent similar events in the future. The right to the truth about violations in its collective aspect, referring to whole communities, implies a duty to remember. It is a memory of the stories of repression and sacrifice, which is an essential and indisputable component of its history and heritage. Duty to remember means that the state has a duty to take all steps documenting the crimes of the regime or sharing knowledge in this field with the public. The goal is to increase public awareness, which is to contribute to avoid similar tragedies in the future. An example of such behaviour is keeping archives documenting the crimes of the regime. It is particularly important in situations where the breaches were systemic and massive. It, in turn, raises the need to prevent similar events in the future. It is also a weapon against historical revisionism for political purposes (Lachowski, 2018, p. 267).

Transitional justice, like other efforts to build peace, seeks to create change in the world and to obtain knowledge that is useful (Goetschel & Pfluger, 2014, p. 55). How is knowledge generated, how are the boundaries of such knowledge determined, which forms of knowledge are considered more justified, and how does the policy of shaping knowledge shape the types of policies that are considered, designed and implemented? Transitional justice is a step in the search for justice, and the right to truth should be seen as a critical part of this dynamic search. Exercising power cannot do it; it cannot work without revealing the truth:

For some, and in particular for kings, it is no doubt preferable not to know who they are, where they come from, what they have done with their own hands, and what they have seen with their own eyes; preferable maybe for kings, but the fact remains that power, power in general, could not be exercised if truth were not manifested. Oedipus would certainly have been happier if he had continued not knowing until the end of his life, but as you know, there could be no peace for Thebes so long as the truth had not come out. So, manifestation of the truth, manifestation of alethurgy is necessary for the exercise of power. (...) Things come to light, and the plague disappears, and order is reestablished. (...) We do not just need the truth in order to discover a guilty person whom we will then be able to punish. It suffices that the truth be shown, that it be shown in its ritual, in its appropriate procedures, its regulated alethurgy, for the problem of punishment no longer to be posed and for Thebes to be liberated” (Foucault, 2014, pp. 72-74).

The consensus on the created history roots on the dissemination and acceptance of truth in the public sphere.

Archives Fever and Power

Transitional justice, like other efforts to build peace, seeks to create change in the world and to obtain knowledge that is useful. However, the policy of how this knowledge is produced, shared and empowered depends on the relationship between various epistemic communities, on the innumerable contexts in which it is rooted at the local, national and international levels. At each of these levels, we are dealing with a fight for what qualifies as valuable knowledge, and competition for “important and legitimate knowledge” shows significant dynamics.

The archives are of particular importance as the most substantial knowledge-power institutions as a general system of forming and transforming statements. Indonesian *arsip* comes from the Dutch *archif*, whose origin can be seen in the French *archives*. Reaching even more in-depth, we will see that the word refers to the Greek *arkheion*, which means “to start, to rule.” The very word of the archive is close

to *arché*, which means both the beginning and the command. *Arché* “apparently coordinates two principles in one: the principle according to nature or history, there where things commence – physical, historical, or ontological principle – but also the principle according to the law, there where men and gods command, there was authority, social order are exercised, in this place from which order is given - nomological principle” (Derrida, 1995, p. 1). The Greek word connects the place of origin (source) and the commandment (command) and assumes a linear order and sequencing, closely related to the element of power.

An archive is a defined and ordered collection of documents, but also an institution (usually governmental) dealing with their collection and storage of these documents. Starting from the category of memory, the archive is the material body of this memory (state), but also the external repository of the memory of the nation, society, specific community or individual. The archives’ products have their historical, evidential, but also identity and creative value. It is a place where the public often meets with private. The essence of the archive is the tension between the desire to keep the event and its inevitable blurring, and even the desire to repress.

The document in the archive is the consequence of the system specifying the rules of expression. Thus, the archive defines the content necessary for collective memory twice: when it defines the archived resource and social and political rules of archiving (form of entry, included and excluded entities), and then when it regulates the access to archival materials and their interpretation, leading to the production of knowledge about the past. In turn, this past is constitutive for collective memory (Foucault, 1972).

Archives are a full-bodied source of knowledge about the past in the process of consolidating democracy. At the same time, groups so far marginalised and excluded or defining themselves outside the official structure of the state are demanding a new reading and interpretation of existing resources, entering their narratives into them or creating

new archives. Other forms of expression are used here than a traditional document. An example can be spoken story. Recordings are created professionally by historians, who use them as sources of the knowledge of history.

On the other hand, the creation of new archives is often of a social or artistic nature. On the fringe of disciplines, defined as specific and institutionalised fields of knowledge, a growing number of contemporary artists and writers tend to appropriate archives and to take part in the discussions they raise among scientists. Sometimes boundaries between artistic productions and discourses of knowledge blur. We observe a “documentary turn” in contemporary art that can be regarded as a disruption (or an attempt of disruption) in what Michel Foucault calls “the order of discourse,” that rules the distribution and division of speech in current societies. In every community, the production of discourse is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to ward off its powers and dangers, to gain mastery over its chance events (Foucault, 1981).

The oral history is archived today with the help of new film, reproduction and photographic technologies, whose digital repositories located in a global network. Moving and moving images and sounds go to groups and communities in motion, cross borders and look for their place. Emerging new recording technologies allow for more and more precise registration of the experience of individuals, blurring the difference between the archive and the experience of recording that precedes them.

Transitional Justice Tools in Truth-Seeking and Fact-Finding

The epistemology of transitional truth is closely related to the administrative structure, forces, and processes to determine the truth. Public knowledge about the past arises as a result of complicated processes of representation by perpetrators, victims, and society, justifying historical research as the basis for social consensus.

The methods of truth-seeking and truth-telling in narrowly understood transitional justice are fact-finding and truth reconciliation commissions (TRCs). The assumption is that the evil done between the victim and the perpetrator deprives them of their dignity. Therefore, the activities of the commission are focused on the reconstruction of the relationship and understanding between the parties involved. There can be forgiveness without meeting and interacting with the victim and perpetrator, apologising and asking for forgiveness, which in turn is forgiven. The goal is to create a common platform for a divided nation that will give a chance to create one interactive narrative about the regime. Another important goal is that the perpetrators recognise the right to the truth about the injustices suffered. It allows them to regain their dignity. On the other hand, the perpetrators regain their dignity through forgiveness. Although this activity takes place between individuals and affects reconciliation, the goal is to build an image of injustice in the authoritarian governments concerned (Justenhofen, 2008, p. 88).

The work of the truth commission in post-conflict conditions often has to rely on (oral) statements made by participants of the conflict, often constituting the basic (and even the only) source of facts, in particular, in the absence of official documents (archives) confirming particular events or crimes. What is important, the systematic development and conceptualisation of justice in the transition period make it necessary to place its assumptions also at the level of peace-building activities.

This way of reaching the truth is not quite a traditional lawsuit, but a quasi-official investigation. Both forms, fundamental from the investigation of justice, are nevertheless exposed to high politicisation. In practice, this may even lead to a distortion of the idea for which the institution was established. Governments should, however, respect and implement recommendations and recommendations from the results of the work of the commission. Committee reports should be made public. The public should be able to comment broadly.

Of course, here too, there is a considerable risk that the actions taken will cause another conflict. The risk of searching for the truth is to create specific “facts,” a normative creation, a single story, and truth, many of whom may feel excluded, because their truth is not taken into account, their stories are not perceived. It threatens to strengthen the conflict line and re-violence (Bräuchler, 2015, p. 28). Especially the right to label the “victim,” can cause a large division and debate in society (Brewer & Hayes, 2011b).

Another aspect deserves to be mentioned. Quite often reparations after the conflict are symbolic (also collective) in the form of building monuments, cemeteries or museums. They are intended to commemorate the tragic moment in the life of a nation or a given community (including ethnicity). It is also a public apology by the state authorities and commemoration of the fate of the victims. When a new regime of truth is presented, and a representative of the successor regime apologises to people on behalf of the nation for actions committed under the previous regime, it implies a certain continuity of state and the rule of law. Temporary apologies allow the continuity of state responsibility, even if it provides a discontinuity - letting go of the past. These activities are directed primarily at the collective victims of violations. They are of great importance to members of the wronged community, but sometimes they can lead to new conflicts. The policy of how this knowledge is produced, shared and empowered depends on the relationship between the various epistemic communities, on the way in which justice of the transition period has developed, on the myriad of contexts in which it is established at local, national and international levels. As a sum of processes and mechanisms to address massive human rights violations in the past, transitional justice has gained importance in international politics as an automatic and indeed necessary response in these contexts (Subotic, 2012).

This relatively young discipline, again supported by the apparatus of research institutes, specialist journals, postgraduate studies, and

texts, is rich in intellectual debate about the nature of justice and its conditions after the end of the conflict. The importance of reparations between victims and perpetrators is based on the belief that this is a necessary element of the justice system. Similarly, forgiveness without remorse cannot exist, and there is no real peace process at that time. For some researchers, however, this is the crucial element that can even take place instead of redress. While there is strong support for truth as a component of justice after the conflict (Hayner, 2010), there is also general criticism. Some scholars, however, point to the associated risks in simplified concepts of truth and the selectivity of frequently revealed truths (Braithwaite et al., 2010; Braithwaite, 2011). A commission's interpretation of "truth" will also be determined by the personality and personal priorities of its leadership (Hayner, 2001, p. 74). TRCs or commissions for historical memory are often not sufficient to promote social integration because of excessive emphasis on abuse of human rights. It excludes a broader social context of violations, such as economic crimes and structural inequalities, which are somewhat at the margins of these significant crimes (Chapman, 2009).

Truth commissions, which were established too early in the peace process, can be counterproductive and make the victims disappointed with the quality of justice they receive. Therefore, at the community level, bottom-up processes of recovering truth around spoken history and gathering stories may be useful at first, because they carry no traces of neutrality, but are helpful, giving the victims a sense of respect, leaving the official truth from top to bottom recovery at a later stage, when the risk of the truth is less destabilizing.

There are many possible sequences of truth, justice, and reconciliation after the conflict. Finding the right path for a specific place and time requires building peace among learning organisations that respond to local voices. Peacebuilding is a craft of responsible management. It requires patience and resilience because most peace initiatives fail, even though most successes have ground on previous failures.

The Questionable Universalism of Transitional Justice Tools and the Challenge For the Science of Society

The fundamental question that must arise when considering the use of transitional justice tools is whether they are universal? Moreover, can they be successfully used in any geographical latitude, in any state, and any society?

The answer seems simple. This process orientates towards the Western ideas of human nature and society, democracy and peace, which are highly problematic from a non-Western perspective. It is not possible to push conflicts and peace processes into the same ready-made patterns or to solve them by international schemes. The pursuit of truth and reconciliation throws substantial challenges here. For many reasons, the tools of transitional justice, which seem universal, cannot be transplanted to any land. Otherwise, we will deal with “post-cold war ascendancy of particular, culturally laden narratives about history, society, governmentality, and justice” and “knowledge imperialism” (Kagoro, 2012, pp. 10-12).

That is why social sciences come here with the help that allows them to adopt cultural factors to the process of transitional justice. Cultural factors include symbols and rituals used in public and private spheres, as well as archetypes, beliefs and cultural stereotypes deeply rooted in communities. The rooted religious patterns also play an essential role. The impact of these elements is the stronger, the less established tradition of law.

Specific cultural factors cause that Western patterns of a settlement with the past, based on the Judeo-Christian distinction between guilt and punishment, are not necessarily appropriate for communities for which reconciliation processes are more critical because they are culturally closer to them. Besides, reconciliation is also a very vague analytical category, primarily through its religious connection with Judeo-Christian theology and an emphasis on interpersonal relations in the individual (rather not collective) dimension. All the more so if

reconciliation (and building peace) is deeply rooted in the concept of Christian forgiveness (Lederach, 2005). A better idea seems to be placing this discourse of post-conflict reconciliation in secular eschatology rooted in sociology (Brewer, 2010). Hence the proposal to call this process “societal healing” (Brewer, 2010), or “civic repair” (Alexander, 2006), to emphasise the importance of social, organisational structures and public policies for managing emotions after social conflict.

Emotions, which are the subject of discussion undertaken by social sciences in the process of transitional to resentment, reconciliation, anger, shame, suffering, hope, revenge, hate and hate speech, compassion, forgiveness, and healing. The emergence of emotions results from several factors. The first is the collapse of the public-private dichotomy in late modernity as a result of personalisation and individualisation that characterises advanced forms of Western capitalism (Brewer & Hayes, 2011a). Along with this, there is a penetration of previously “private” behaviours and emotions into the public sphere, the domestication of public space (Kumar & Makarova, 2008). So public interest in emotions is partly a consequence of their transformation into public display. The second factor is the emotional dynamics of the societies shown after the end of the conflict. The return of emotions reflects the presence of genocide in contemporary experiences, the global rise of new forms of organized violence, the increase in the number of refugees and displaced people due to conflict, as well as the development of unsustainable pluralistic, multicultural societies in a context in which strangers are no longer a friendly stranger, but as an enemies coming in inward (Brewer & Hayes, 2011a). Another factor is the high level of anxiety and anxiety that is one of the consequences of globalisation for humans (Bauman, 1998).

The social meanings of trauma are not only the same everywhere, but they do not mean the same everywhere. Cultural trauma works through successive generations and manifests itself in various forms, and is embedded in the collective oblivion memory. Unhealed wounds

can be re-opened quickly and lead to a new conflict, especially in countries with an unprocessed democratic tradition. There are, however, no clear boundaries between individual trauma and collective trauma, no clear rules for the transmission of historical trauma from generation to generation. Regardless of the value of memory and the obligation to remember, it should be noted that sometimes and oblivion is also considered a value. It can be considered a gift and a grace for the victims, allowing them to continue to live a normal life. Even if oblivion can be a danger, obsessive remembrance can be a threat to social cohesion. Memory and oblivion have thus become part of the social sciences dictionary, just as for a new democratic government which, after the end of the conflict, must strike a balance between honouring the history and equipping citizens with a future.

Here we see two bipolar assertions which, paradoxically, do not contradict each other, but reconciling them at the political level is extremely difficult: 1. post-conflict societies who forget about their past are doomed to repeat it; 2. history should not be an arbitrator of the future. It shows dilemmas and challenges facing social sciences, but also captures this strategy as a specific post-conflict strategy „remembering to forget“, “where divided memories, including memories of the conflict, are not forgotten so much as transcended, with victims reminding themselves to forget the painful aspects of remembrance when acting and talking about erstwhile opponents in the public sphere” (Brewer & Hayes, 2011a, p. 12).

What is even more critical, although the success of transitional justice depends on social support, not everywhere the concept of civil society will be understood in the same way. Here too, Western reflection may not be transferred to other parts of the world. The same is true of third countries in the process of transitional justice. The role of the international community should be limited at most to assisting and supporting a society in transition, not to replace it in efforts to promote democracy. All undertaken initiatives should be embedded and adopted

in the awareness of transforming society, people actively involved in the process of normalisation and stabilisation of their country.

Conclusion

There are two basic views on legal measures implemented during fundamental political changes. According to realists, the means of justice of the transitional period are merely the result of a dominant balance of power. How we approach the past is the apparent result of how we can get closer to it due to the current political and economic situation. On the other hand, the idealistic perspective perceives transitional justice as another field of action for universal ethical principles. Therefore, some unique measures in times of democratisation are often perceived as a distortion of justice, and not exceptional tools used in an extraordinary transition environment. None of these two approaches can fully take into account the role of law during political changes and the extraordinary character of justice in this period (Teitel, 2000).

Transitional justice assumes that it is a response to the legacy of extensive systemic violence accompanied by breaking social bonds and the erosion of social trust. The perpetrator of this systemic violence was the state which should be called to counteract it. Therefore, the role of the new democratic authorities is to restore confidence in the state and trust between citizens. It results in the weakening of social tensions and enables stabilisation. It facilitates the emergence of a civil society in which citizens feel not as an object, but as a subject of rights, which is appropriate for a democracy.

Therefore, young democracy faces a difficult task and it is more difficult when we deal with past systemic vertical and horizontal violence. Vertical means here the violence of the officers acting on behalf of the state against its citizens, while the horizontal means a crime committed by one group, the second, usually with the consent of public authorities, while ensuring impunity for perpetrators of violence. In both cases, therefore, this state is responsible for violence, which

we can call the political burden of social meaning, which concerns the relationship between the human body and the state. It is not easy because, in the face of a collective breakdown of social bonds and trust, individuals from different groups become negatively perceived by Others. Lack of trust, fear, and aggression are related to the fact that the boundaries between fantasy and reality blur when violence, death, and terror have become part of everyday life (Hamber, 2009, p. 92).

In such difficult conditions, it is impossible not to refer to the tradition and heritage of social sciences. Just as politics in the 21st century depends on the findings of the social sciences, social science will be better understood as reflecting the requirements of public policy. There can be no science about society without organisations and resources. Powerful not only choose from competing truths but also shape what we understand as truth. Just as political decision-makers recognise that they understand, before they act - consciously or not, have theories and values, and the analytical assumptions that shape their progress - social scientists recognise that they work to understand. The organisation of social sciences knowledge, choice of problems, selection of analytical tools and solution definitions represent commitments to politically inflected values (Anderson, 2003, p. 107).

Science and politics are not as fundamentally different beings as the traditional concept of the selfless search for truth, as opposed to the pure promotion of self-interest, suggests. What counts as knowledge in a given scientific community is based on negotiated reality in precisely the same way as political subjects. There is no science without politics, but there is no policy without analytical reflection. Truth is always a line of dialogue in a given historical situation. However, this does not mean that politics and science are one. The illusion is that truth and power are disjunctive domains. The boundaries between scientific and political and practical arguments are very fluid, especially when it comes to social sciences whose subject is a social reality in which both researchers and practitioners are continually thinking and negotiating. Like democracy,

research bases oneself on the idea of free dialogue. However, science not only tolerates subversive views but in its understanding of itself and the world strongly encourages criticism. For science, nothing is clear from the principle. On the contrary, the established truths must be critically analysed. Perhaps that is where research can make the most significant contribution to the political and administrative debate: on the critical stage of analysis.

References

- Alexander, J. (2006). *The civil sphere*. Oxford: Oxford University Press.
- Alvarez-Nakagawa, A., (2018). *Law, Justice, Time: A Critique of Transitional Justice from Walter Benjamin's Politics of Time*. In K. D. Karatzas (Ed.). *Time, Space and Mobility*. 65-71. Warsaw: Interdisciplinary Research Foundation.
- Anderson, L. (2003). *Pursuing Truth, Exercising Power. Social Science and Public Policy in the Twenty-first Century*. New York: Columbia University Press.
- Arendt, H. (1998). *The Human Condition, Second Edition*. Chicago: The University of Chicago Press.
- Bachmann, K. (2011). *Paradoxes of Retribution. What Central European Experiences tell about Transitional Justice in Arab Countries*. Center for International Relations in cooperation with the Konrad Adenauer Foundation in Poland.
- Bauman, Z. (1998). *Globalization: The Human Consequences*. New York: Columbia University Press.
- Bräuchler, B. (2015). *The Cultural Dimension of Peace. Decentralization and Reconciliation in Indonesia*. London: Palgrave Macmillan.
- Brewer, J. D. (2010). *Peace processes: a sociological approach*. Cambridge: Polity.
- Brewer, J. D., & Hayes, B. C. (2011b). Victims as moral beacons: victims and perpetrators in Northern Ireland. *Contemporary Social Science*, 6:1, 73-88, DOI:10.1080/17450144.2010.534494.

- Brewer, J., & Hayes, B. C. (2011a). Post-conflict societies and the social sciences: a review. *Contemporary Social Science*, 6:1, 5-18, DOI: 10.1080/17450144.2010.534497.
- Brudholm, T. (2008). *Resentment's Virtue: Jean Améry and the Refusal to Forgive*. Philadelphia: Temple University Press.
- Chapman, A.R. (2009). *Truth Finding in the Transitional Justice Process*. In H. van der Merwe, V. Baxter, & A. R. Chapman (Eds.). *Assessing the Impact of Transitional Justice. Challenges for Empirical Research*. 91-11. Washington, DC: United States Institute of Peace.
- Czarnota, A. (2003). Radykalne zło a prawo. Jak mierzyć się z trudną przeszłością? *Ius et Lex*, Vol. II. 351-363.
- Derrida, J. (1995). *Archive Fever. A Freudian Impression*. Chicago & London: The University of Chicago Press.
- Duthie, R., (2009). *Introduction*. In P. de Greiff & R. Duthie (Eds.). *Transitional Justice And Development. Making Connections*. 17-27. New York: International Center for Transitional Justice. Social Science Research Council.
- Eser, A., Arnold, J. & Kreicker, H. (2001). *Criminal Law in Reaction to State Crime Comparative Insights into Transitional Processes. A Project Report*. Freiburg im Breisgau: Max-Planck-Institut für ausländisches und internationales Strafrecht.
- Foucault, M. (2014). *On the Government of the Living. Lectures at the Collège De France 1979–1980*. M. Senellart (Ed.), New York: Palgrave Macmillan.
- _____. (1981). *The Order of Discourse*. Trans. I. McLeod. In R. Young (Ed.), *Untying the Text: A Post-Structuralist Reader*. 48-78. London: Routledge.
- _____. (1972). *The Archaeology of Knowledge and the Discourse On Language*. New York: Pantheon Books.
- Govier, T. (2010). *A Practical Study of Argument (7th Edition)*. Belmont: Wadsworth Cengage Learning.

- _____. (1997). *Social Trust and Human Communities*. Montreal & Kingston - London - Buffalo: McGill-Queen's University Press.
- Gready, P., Robins, S. (2017). Rethinking civil society and transitional justice: lessons from social movements and 'new' civil society, *The International Journal of Human Rights*, 21:7, 956-975, DOI: 10.1080/13642987.2017.1313237.
- Hamber, B. (2009). *Transforming Societies after Political Violence Truth, Reconciliation, and Mental Health*. Dordrecht-Heidelberg-London-New York: Springer.
- Hayes, B. C., & McAllister, I. (2001). Sowing Dragon's Teeth: Public Support for Political Violence and Paramilitarism in Northern Ireland. *Political Studies*, 49(5), 901-922. DOI:10.1111/1467-9248.00346.
- Hayner, P. B. (2010). *Unspeakable Truths. Transitional Justice and the Challenge of Truth Commissions (Second Edition)*. New York & London: Routledge.
- _____. (2001). *Unspeakable Truths. Confronting State Terror and Atrocity*. New York & London: Routledge.
- Hirsch, M., & Spitzer, L. (2010). *Ghosts of Home. The Afterlife of Czernowitz in Jewish Memory*. London: University California Press.
- International Center for Transitional Justice, What is Transitional Justice? Retrieved from <https://www.ictj.org/about/transitional-justice>.
- Justenhofen, H-G. (2008). Individuelle und kollektive Versöhnung. *Die Neue Ordnung*, 2, 84-93.
- Kagoro, B. (2012). *The Paradox of Alien Knowledge, Narrative and Praxis: Transitional Justice and the Politics of Agenda Setting in Africa*. In M. Chrispus Okello et al. (Eds.). *Where Law Meets Reality: Forging African Transitional Justice*. 4-52. Cape Town: Pambazuka.
- Lachowski, T. (2018). *Perspektywa praw ofiar w prawie międzynarodowym. Sprawiedliwość okresu przejściowego (transitional justice)*. Lodz: Lodz University Press.

- Lamb, S., & Murphy, J. G. (Eds.). (2002). *Before Forgiving: Cautionary Views of Forgiveness in Psychotherapy*. Oxford: Oxford University Press.
- Lederach, J. P. (2005). *The moral imagination*. Oxford: Oxford University Press.
- Morris-Suzuki, T. (2005). *The Past Within Us: Media, Memory, History*. London-New York: Verso.
- Neier, A. (1995). *What Should Be Done about the Guilty?* In N. J. Kritz (Ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. 172-183.. Volume I: General Considerations. Washington: United States Institute of Peace Press.
- Olick, J. K., Vinitzky-Seroussi, V., & Levy, D. (Eds.). (2011). *The Collective Memory Reader*. Oxford: Oxford University Press.
- Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims*. Resolution adopted by the General Assembly on 21 December 2010, UN General Assembly, A/RES/65/196.
- Sztompka, P. (2004). *The Trauma of Social Change. A Case of Postcommunist Societies*. In J. C. Alexander, N. J. Smelser, P. Sztompka, R. Eyerman, & B. Giesen. *Cultural Trauma and Collective Identity* (pp. 155-195). Berkeley – Los Angeles – London: University of California Press.
- Teitel, R. (2000). *Transitional Justice*. Oxford - New York: Oxford University Press.
- The rule of law and transitional justice in conflict and post-conflict societies*. (2004). Report of the Secretary-General. UN Security Council. UN Doc S/2004/616.