

**Legal Frames of Memory.  
Transitional Justice in Central and Eastern Europe.  
Warsaw, 27–29 November 2013**

The “Genealogies of Memory” project—started by the European Network Remembrance and Solidarity in 2011—aims to facilitate academic exchange among international scholars interested in studying social and cultural memory in Central and Eastern Europe.<sup>1</sup> Through organizing a series of conferences and seminars, the project attempts to defining the specificity of Central and Eastern European memory by discussing the changes in remembrance that have been taking place in the region throughout the 20<sup>th</sup> and 21<sup>st</sup> centuries. It also addresses the possible application of this research into the global field of memory studies. The first “Genealogies of Memory” conference, held in 2011, was focused on the critical examination of theories and methods developed in Eastern and Western scholarship to study memory process in Central and Eastern Europe. The 2012 conference sought to explore memory phenomena in a regional—rather than national—perspective. Experiences of war and mass violence of Central and Eastern Europe were compared with those of Southern Europe, Middle East, Africa, Asia and Latin America.<sup>2</sup>

This year’s conference discussed the complex relationships between memory and law, as well as concepts of justice with reference to post-communist transformations.<sup>3</sup> As the conference conveners—Małgorzata Pakier (Museum of the History of Polish Jews), Stanisław Tyszka (University of Warsaw), and Jiří Příbáň (University of Cardiff)—explained, after the collapse of communism, the legal system, which is one of the multiple modes of shaping collective memories in modern societies, played an important role in coming to terms with the past in the region. On one hand, for the state, it served as a powerful instrument to inform collective memory and identity and, on the other, it became a battleground for different, often conflicting, visions of the past put forward by various institutions, groups and individuals. Notably, however,

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<sup>1</sup> More information about the project and the conferences, including their programs as well as abstracts, can be found at <http://genealogies.enrs.eu>

<sup>2</sup> Selected papers from the conferences were published in *Polish Sociological Review*, vol. 3 (2013). A collected volume entitled *European Memory: Eastern Perspectives* will soon be published by Berghahn Books.

<sup>3</sup> The conference was organized by the European Network Remembrance and Solidarity in cooperation with Collegium Civitas, and the Institute of Social Prevention and Resocialization, University of Warsaw. Conference Partners included Institute of Contemporary History of the Academy of Sciences of the Czech Republic, Nation’s Memory Institute (Slovakia), and Open Society Archives (OSA, Hungary). Funding was provided by the Visegrad Fund and the National Centre for Culture (Poland).

different countries in the region employed different legal measures which reflected their historical legacies.

The symbolic dimension of law in post-communist societies has been, to a large extent, neglected by scholars of memory. The aim of the conference was to approach law as one of the possible social frameworks of memory within which examples of post-communist transformations can be studied. The conference addressed the intersection of legal discourses and other domains of social life as well as discussed various concepts of justice articulated in historical works, civil society initiatives, and media texts. It brought together distinguished academics as well as early career scholars—historians, sociologists, anthropologists and philosophers of law—and practitioners of memory, journalists, and educators. Over the course of three days, thirty papers—organized into seven panels—were presented, creating a space for discussing a number of problems such as the national and regional specificities of transitional justice, the restorative and retributive aspects of justice, the role of lustration and accessing the past through the archives, and courts' educational role in writing history.

The keynote lecture, entitled "Justifying Atrocities: Contested Victims," and delivered by Elazar Barkan—a scholar in human rights and conflict resolution and head of Human Rights Concentration at Columbia's School of International and Public Affairs—critically examined the political impact of the notion of victimhood in the process of creating a historical dialogue in conflict resolution. The presentation started with Barkan's observations about the proliferation of claims of victimhood in the 20<sup>th</sup> century. In pointing to the blurring of the lines between the victim and the perpetrator, the speaker discussed the instance of a contested victimhood which informs identity building processes and is endowed with a strong mobilizing power to instigate further conflicts. Therefore, contrary to popular interpretations, victimhood should not be viewed as an emblem of morality, but a form of political agency, legitimacy, and capital. The speaker also emphasized the need to integrate historical dialogue into the processes of conflict resolution in order to develop an intersubjective history of victimization which include the viewpoints of different parties involved in the conflict. In conclusion, Barkan urged listeners to discuss history of atrocities in a simple and unemotional language, emphasize the importance of context in which they occurred, and avoid the cult of victimization.

The responses to Barkan's lecture were, to some extent, similar to those following Aleida Assmann's address "The Transformative Power of Memory," delivered during the 2011 "Genealogies of Memory" conference. Assmann presented a concept of dialogical memory which actively and emphatically seeks to establish a shared understanding of the past by different individuals and collectivities. The discussants questioned whether it is possible to realize such model of memory, given the asymmetries of power that permeate social structures and human interactions. Similar questions were raised in response to Barkan's call for creating an intersubjective historical narrative as a means of conflict resolution. Who would initiate the process? Who would control it? What should be done when some parties ignore or refuse to participate in it? Other questions discussed included: the distinction between impartiality and intersubjectivity, and the factors determining the willingness and openness

of the conflicting sides to alter their interpretations of the past. Examples of more and less successful cases of conflict resolution and reconciliation were examined.

Participants returned to the theses of Barkan's lecture in their own presentations. All seven panels were intellectually stimulating and generated lively discussions, however, three of them deserve special attention. The panel "Justice Within and Beyond Law: The Actions of Civil Society," examined three case studies (of Slovakia, Romania, and Russia) in order to pinpoint the relationship between the state and civil society in reckoning with the communist past. Nadya Nedelsky's (Macalester College) presentation started with a question: "Is there any reason to assume that civil society contributions to transitional justice lead to good rather than evil?" The speaker argued that Slovakia's unusual approach to transitional justice was due to the influence of two members of civil society: the associations of former political prisoners and the media. The paper explored the implications of the Slovak case for theorizing civil society in relation to transitional justice. In conclusion, Nedelsky called for a revision of normative assumptions that underlie discussion of civil society and an expansion of the set of possible relationships between the state and civil society in times of transition.

Lavinia Stan (St. Francis Xavier University) discussed the process of politization and delegitimation of the concept of transitional justice in contemporary Romania. In analyzing the discourse and activities of three main actors of Romanian civil society after the fall of communism—associations of victims, associations of former perpetrators, and a group of intellectuals and former dissidents—she pointed to a number of challenges the transitioning societies have to face. The most important of them, the speaker argued, is to find a common ground to promote the process of coming to terms with the difficult past when different carrier groups compete against each other to validate their interpretations of the past.

Elena Glushko (Russian Academy of Sciences) examined the popularity of the concept of lustration in certain segments of Russian society. Though it is unlikely that this means of transitional justice will be employed by state authorities, Glushko argued, raising awareness about that problem serves a psychological need of bringing hope that those who committed crimes will, eventually, be prosecuted. Commenting on the presentations and opening the floor for discussion, Yifat Gutman (Hebrew University) addressed a question: should transitional justice be understood as a part of an internal search for a post-communist national identity, or as a transnational platform which can be used to translate national identity struggles into claims recognized by institutions such as the European Union or the United Nations?

The first of the two sessions called "Naming Names. Writing History: Courts' Educational Role" was opened by Joachim Savelsberg (University of Minnesota) who discussed the impact of criminal judicial proceedings against human rights perpetrators on the collective representations of massive violations of human rights. His comparative analysis, based on an empirical study of framing the atrocities in Darfur, revealed that though court interventions have the potential to increase public attention to suffering, the results of the proceedings are filtered through national factors such as institutional structures of the state and national cultural sensibilities. An inter-

esting commentary to Savelsberg's findings was presented by Ivor Sokolić (University College London) who explored how domestic war crimes trials influence the development of norm construction in Croatia. According to Sokolić, war crimes trials lack the capability to instigate significant normative and cultural change in society. The speaker demonstrated that the states' compliance with the international demands for transitional justice neither exerted influence on cultural change nor altered the war narrative in Croatia.

Magdalena Saryusz-Wolska (Centre for Historical Research of the Polish Academy of Sciences in Berlin) discussed the politics of reeducation, denazification and *Schuldfrage*, as means of transition from totalitarianism to democracy, in Germany after 1945. More specifically, she presented the results of her study of the visual representations of the Third Reich in post-war Germany—images on banknotes, book and newspaper illustrations etc. The speaker concluded that although the strategies of presenting the Nazi past were diverse, the two most prominent contexts in which they appeared were satire and court trials.

The next panel, which also addressed courts' role in education and the writing of history, was opened by Aleksandra Gliszczyńska-Grabias (Adam Mickiewicz University of Poznań) who discussed a more contemporary problem of how the judgments of the European Court of Human Rights shape collective memory of post-communist societies. Analyzing a series of case studies, she presented an explanation as to why the standards developed in relation to the Nazi regime have not been extrapolated to those concerning the communist regime. The speaker suggested that though West European governments officially renounced communism, the knowledge about communist crimes will never penetrate Western European consciousness to the same degree as the knowledge about the crimes committed by the Nazis.

The question of courts' influence on collective memory was further elaborated by Mark Osiel (University of Iowa) who analyzed the responses of the American Court of Human Rights to mass atrocities committed throughout the region. The presenter addressed the question whether the court's attempts at shaping collective memory are indeed as "innovative," "progressive," and "path-breaking," as the popular discourse suggests. Osiel demonstrated that despite first appearances standard theory can accommodate most, if not quite all, of them. The session was completed by Christiane Wilke's (Carleton University) analysis of two public debates concerning the rule of law in transitioning societies—Western Germany in 1945 and Western and Eastern Germany in 1989. Referring to Edward Said's concept of orientalism, Wilke demonstrated that in postwar West Germany the rule of law was affirmed against the asserted lawlessness of Eastern Europe. Similarly, after 1989 the German transitional trials were designed to teach East Germans about the rule of law that they, presumably, had not been familiar with.

After a break, speakers reconvened to take part in the roundtable discussion to summarize and reflect on the main themes and topics of the conference. István Rév (Central European University) presented a thought-provoking thesis that the transition in Central and Eastern Europe was directly informed by the historical reinterpretations of the French Revolution whose Bicentennial coincided with the

fall of communism in 1989. Familiar with the idea of the Bolsheviks that the French Revolution was just a preliminary phase of the Bolshevik Revolution, and acquainted with the East European intellectuals' accounts of communist crimes, the French historians were cautious in their reexaminations of the French Revolution. Their views, in turn, shaped the attitudes of the architects of political changes in Eastern Europe who wanted to avoid the terror associated with the revolution and thus were reluctant to engage in retroactive justice.

Yaroslav Pasko (Donetsk State University) reflected on collective memory and identity struggles in contemporary Ukraine. He pointed to a number of factors that have contributed to this situation. The European values and traditions were lost under communism. Attempts at the implementation of European standards into the Ukrainian legal system have been largely unsuccessful due to the long time subjugation of intellectual and national culture to Soviet domination, and the dissolving of civil society. The clashes of different visions of the past articulated in the East and West of the Ukraine make it hard to find a common ground for producing a unifying national model of memory. In conclusion, however, the speaker expressed hope that positive changes might be realized through the Ukrainian constitution which is oriented towards social reform and democratization.

Focusing on the conference themes, Adam Czarnota (Onati International Institute for the Sociology of Law) noticed that a lot of attention had been given to demonstrate the positive outcomes of the involvement of law in dealing with the past. He, on the contrary, argued that the memory has been colonized and petrified by legal institutions. Czarnota wondered whether it is legitimate to apply the concept of transitional justice to the dealings with the past in Central and Eastern Europe after 1989. He noted that the term "transitional justice" is virtually absent from the political discourse of the region and instead the term "decommunization" is used. The speaker also pointed to the fact that, contrary to other areas of the world, in Central and Eastern Europe there was no need to establish truth and reconciliation commissions, and the only instrument of transitional justice designed here was lustration.

Eva-Clarita Pettai (University of Tartu) discussed the problems connected to the tendency to overstretch the concept of transitional justice to encompass a whole spectrum of socio-cultural phenomena related to dealing with the past of previously non-democratic regimes. According to the speaker, the term "transitional justice" should retain its analytical character. In calling for close intellectual scrutiny, Pettai referred to her own presentation in which she proposed a classificatory matrix for identifying and organizing cross-sectional interplay and patterns of truth and justice measures in post-communist states. She later used this model to analyze the truth and justice processes in the Baltic States. Referring to the thesis that communist crimes will never be fully recognized by Western societies, she pointed to the fact that the European Union provides considerable financial support for programs aiming to symbolically recognize the communist past as part of European heritage. However, she emphasized the importance of time to consolidate the memory of communist crimes.

The conference was closed with an address of Jan Rydel (European Network Remembrance and Solidarity) who, after summarizing the themes of the conference, invited everyone to the next year's "Genealogies of Memory" conference which would address oral history and the relations between individual and collective memories of the 1989 revolutions. We are looking forward to more engaging debates which advance our understanding of the diversity and dynamics of the memory processes in Central and Eastern Europe.

Monika Żychlińska  
Institute of Sociology, University of Warsaw  
E-mail: [monika.zychlinska@gmail.com](mailto:monika.zychlinska@gmail.com)