TRANSITIONAL JUSTICE AND MEMORY IN EUROPE (1945–2013)
SERIES ON TRANSITIONAL JUSTICE

The Series on Transition Justice offers a platform for high-quality research within the rapidly growing field of transitional justice. The research is, of necessity inter-disciplinary in nature, drawing from disciplines such as law, political science, history, sociology, criminology, anthropology and psychology, as well as from various specialised fields of study such as human rights, victimology and peace studies. Furthermore, the research is international in outlook, drawing on the knowledge and experience of academics and other specialists in many different regions of the world.

The series is aimed at a variety of audiences who are either working or interested in fields such as crime and justice; human rights; humanitarian law and human security; conflict resolution and peace building. These audiences include academics, researchers, students, policy makers, practitioners, non-governmental organisations and the media.

All books published within the series are subject to a double-blind peer review by recognised authorities in the field.

The General Editors of the Series are:
– Prof. Stephan Parmentier (Catholic University of Leuven, Belgium)
– Prof. Jeremy Sarkin (University of South Africa)
– Prof. Elmar Weitekamp (University of Tübingen, Germany)

The general editors receive the support from an Editorial Committee and an Advisory Board, consisting of internationally renowned academics and practitioners.

Published titles within this Series:
5. Antoine Buyse (ed.), Margins of Conflict. The ECHR and Transitions to and from Armed Conflict (2011), 978-94-000-0157-2

For previous volume in the series, please visit http://tj.intersentia.com

SERIES ON TRANSITIONAL JUSTICE, Volume 17
TRANSITIONAL JUSTICE AND MEMORY IN EUROPE (1945–2013)

Edited by
Nico Wouters

intersentia
Cambridge – Antwerp – Portland
CONTENTS

The Use of History in the Field of Transitional Justice: A Critical Introduction
Nico Wouters ............................................................... 1
1. Is history useful? ...................................................... 4
2. The past as a guide for present and future ...................... 6
3. Closure and reconciliation: searching for a consensus on the past .... 10
4. Justice and (historic) truth ......................................... 17
5. To conclude: how this book approaches history in transitional justice ........................................................................................................ 22

West Germany: A Case of Transitional Justice avant la lettre?
Annette Weinke .............................................................. 25
1. International law and 20th Century Germany .................. 25
   1.1. The “longue durée” of the German “struggle to come to terms” ... 25
   1.2. “A past that will not go away…” Continuity and rupture after 1945 .................................................................................................................. 29
   1.3. The legacy of “Leipzig” and “Nuremberg” ...................... 32
2. National policies of “Vergangenheitsbewältigung” ............... 37
   2.1. Aporia of West German “Vergangenheitsbewältigung” ....... 37
   2.2. Return of the rule of law? ......................................... 41
3. Justice, history, memory ............................................... 48
4. Summary ......................................................................... 52
Selective further reading ...................................................... 55

Changing Things so Everything Stays the Same: The Impossible “épuration” of French Society, 1945–2000
Marc Olivier Baruch .......................................................... 63
1. The legacy of earlier experiences .................................... 63
2. Transitional justice in the making (1943–1947) ................. 64
   2.1. Type of preceding regime ......................................... 64
   2.2. Type of transition .................................................... 66
   2.3. Type and duration of key transitional justice period ........ 67
2.3.1. Before the liberation of mainland France (August 1943–August 1944) ........................................ 67
2.3.2. Judicial state-initiated and state-executed measures ......... 68
2.3.3. Quasi-judicial techniques .................................. 70
2.3.4. Non-judicial ...................................................... 72
2.3.5. Numbers of punished perpetrators ........................... 73
2.4. Evaluation .................................................................. 74

3. Transitional justice in the long run, a chronological approach ...... 76
3.1.1. Trials ................................................................. 77
3.1.2. Reconciliation measures ....................................... 78
3.1.3. The domestic and international political context ........... 79
3.1.4. The national impact of international developments in the domain of TJ ........................................... 80
3.1.5. The role of academic research and of literary works ....... 81
3.1.6. Memory eruptions: the public debate ........................ 81
3.2. 1954–1970: a time overshadowed by General de Gaulle ..... 82
3.2.1. The domestic and international political context .......... 82
3.2.2. The influence of successive generations, the role of academic research, literary works and movies ........... 83
3.2.3. Memory eruptions: the public debate ......................... 85
3.3.1. The political context ........................................... 86
3.3.2. The role of academic research and culture ................ 87
3.3.3. Memory eruptions: the public debate ........................ 88
3.4. 1995 and after .......................................................... 88
4. A few words of conclusion ............................................... 90

Selective further reading ...................................................... 92

A Consensus of Differences. Transitional Justice and Belgium’s Divided War Memories (1944–2012)
Nico Wouters and Dirk Luyten ........................................... 95

1. The central phase of transitional justice policies (1944–1951) .... 95
1.1. The occupation regime ............................................. 95
1.2. Transitional justice measures .................................... 97
1.2.1. Judicial policies: state-initiated and state-executed measures ................................................. 97
1.2.2. Judicial innovations ............................................. 102
1.2.3. Quasi-judicial techniques ...................................... 105
2. Towards mitigation and reintegration of convicted collaborators 107
3. Policy for victims ...................................................... 113
4. Long-term processes: on the effects of transitional justice on memory development ......................................................... 115
  4.1. Divided memories and the amnesty debate ................................. 115
  4.2. Patriotic memory communities and the Belgian state .................... 119
  4.3. The memories of war enter a period of transition (1971–1994) ....... 122
  4.4. The global human rights culture: an end to Belgium’s divided memories? ................................................................. 125
  4.5. On memory consensus ........................................................ 128
Selective further reading ............................................................ 130

Transitional Justice in the Netherlands after World War II
Peter Romijn and Erik Schumacher .............................................. 133
1. Phase I (before 10 May 1940): pre-war legal framework .................. 133
  2. Phase II (between 10 May 1940 and 1 January 1952) .................... 134
     2.1. Background .................................................................. 134
     2.2. New legislation ............................................................ 136
     2.3. Administration of justice ................................................ 136
          2.3.1. Minor cases ......................................................... 138
          2.3.2. Serious cases ....................................................... 140
     2.4. Reintegration ............................................................... 142
     2.5. Purging .................................................................. 143
          2.5.1. Purging in practice ............................................... 145
          2.5.2. Purges in the non-government sphere ......................... 147
     2.6. Compensation ............................................................. 148
     2.7. Evaluation .................................................................. 150
  3. Phase III (from 1 January 1952) .................................................. 151
     3.1. Public memory .............................................................. 151
     3.2. Clemency .................................................................. 156
     3.3. Reintegration ............................................................... 159
     3.4. Compensation .............................................................. 162
     3.5. Commemorations .......................................................... 165
     3.6. Reconciliation? .............................................................. 167
Abbreviations ............................................................................ 169
Selective further reading ............................................................ 170

From Ruptured Transition to Politics of Silence: the Case of Portugal
Filipa Raimundo and António Costa Pinto ...................................... 173
1. The antecedents: the authoritarian regime .................................... 173
  2. The Portuguese way to democracy: a transition by rupture .......... 176

Intersentia vii
3. Transitional justice: trials and purges ................................................................ 178
   3.1. The first phase: transitional justice based on an alleged
       revolutionary legality (April 1974–December 1975) .................. 178
       3.1.1. The purge of the military, the civil service, and the
              judiciary ................................................. 179
       3.1.2. The political police ............................................ 182
       3.1.3. The economic elites ............................................ 183
   3.2. The second phase: the establishment of democratic legality
       (December 1975–1982) .............................................. 185
       3.2.1. The military trials .............................................. 185
       3.2.2. The reintegration of perpetrators .......................... 187
4. The post-transitional justice period (1982–) ................................................. 190
   4.1. The archives .......................................................... 190
   4.2. Reparation measures for victims ......................................... 191
   4.3. Symbolic reparations .................................................. 192
   4.4. Remembrance and truth telling ......................................... 194
5. Summary and conclusions .............................................................................. 196

Abbreviations ........................................................................................................ 197
Selective further reading ......................................................................................... 197

Amnesty and Reparations Without Truth or Justice in Spain
Paloma Aguilar and Clara Ramírez-Barat .......................................................... 199

1. Historical antecedents of the current transitional justice policies
   in Spain ......................................................................................... 200
   1.1. Transitional justice in the pre-Franco period (September
        1923–July 1936) ............................................................ 200
   1.2. The Civil War (July 1936–April 1939) .............................. 204
   1.3. The Franco regime (July 1939–20 November 1975) ............ 205
   2.1. The legacy of the Franco regime ...................................... 207
   2.2. The ‘Spanish model’: reparations and amnesty without
       accountability and truth telling ......................................... 208
   3.1. Why has a post-transitional phase taken place in Spain? .... 214
   3.2. Measures approved from 2002 to 2012 ............................. 217
   3.3. Judicial initiatives ......................................................... 232
   3.4. Social initiatives .......................................................... 238
4. Memory and transitional justice in the political culture of
   the Spaniards ............................................................................ 241
5. Conclusions ................................................................................................. 247
Contents

Abbreviations ................................................................. 253
Selective further reading ................................................. 254
Official websites and other private resources ....................... 257

Transitional Justice after the Collapse of Dictatorship in Greece
Stefanos Katsikas ............................................................ 259

1. Introduction ................................................................. 259
3. The first measures towards democratisation: “The Government
   of National Unity” ...................................................... 263
4. The junta trials ............................................................. 264
   4.1. The trial of the instigators of the 21 April 1967 military coup ...
      266
   4.2. The verdict of the trial of the instigators of the 21 April 1967
      military coup ......................................................... 268
5. The trial over the November 1973 events at the Polytechnic
   School of Athens ....................................................... 269
   5.1. The verdict of the Trial over the November 1973 events
      at the Polytechnic School .......................................... 272
6. The trials of the torturers .................................................. 272
   6.1. The verdict of the trials of the torturers .......................... 274
7. Incarceration ............................................................... 275
10. 1989 and reconciliation by fire ......................................... 280
11. Epilogue ................................................................. 281
Abbreviations ................................................................. 286
Selective further reading .................................................. 286

The Incomplete Transition in Hungary
Renáta Uitz ................................................................. 289

1. Introduction: The “three phases” in the Hungarian context .......... 289
2. Phase 1: Repressions ..................................................... 291
   2.1. From Admiral Horthy’s conservative nationalist to the
        national socialist regime .......................................... 292
   2.2. Establishing the communist regime: 1944–1948 .................. 297
   2.3. 1949–1956: The years of communist dictatorship ................. 299
   2.4. From the suppression of the 1956 revolution to normalisation
        into the ‘happiest barrack’ ........................................ 300
3. Phase 2: Transitional justice measures ................................ 302

Intersentia ix
Contents

3.1. A prelude to transitional justice measures in 1989: the first effort in doing justice about WWII? ........................................ 302
3.2. The legal framework for transitional justice after 1989 ........ 304
  3.2.1. Retroactive justice measures punishing perpetrators of past crimes ................................. 306
  3.2.2. Rehabilitation laws.................................................. 308
  3.2.3. The files and activities of the communist Secret Services: Lustration and access to files .......... 309
3.3. The context of transitional justice measures following 1989 .... 312
4. Phase 3: Lasting impact ..................................................... 312
  4.1. Reintegration of perpetrators .................................... 312
  4.2. Measures for victims .............................................. 313
    4.2.1. Compensation .................................................. 313
    4.2.2. Victims’ organisations ..................................... 316
    4.3.3. A largely unfulfilled promise: access to files .... 316
  4.3. Remembering: the politics of memory ....................... 320
5. Conclusions ................................................................. 323
Selective further reading ...................................................... 324

The Polish Paradox: Transition from and to Democracy
Klaus Bachmann .............................................................. 327

1. Transitional justice in Poland during and after World War II .... 327
  1.1. Introduction ....................................................... 327
  1.2. Antecedents ....................................................... 329
  1.3. The preparation of transitional justice measures .......... 331
  1.4. The scope of justice ............................................ 333
  1.5. Non-judicial measures and popular purges .................. 335
  1.6. Reintegration and the impact of demography and reconstruction ........................................... 337
  1.7. The logic of inclusion ........................................... 338
  1.8. Historical policy, historiography and the meaning of collaboration .......................................... 339
  1.9. Memory eruptions – the question of anti-Semitism after the war ................................................. 341
2. Transitional justice and democratisation during the nineties .... 342
  2.1. Introduction ....................................................... 342
  2.2. The preparation of transitional justice measures .......... 342
  2.3. Non-judicial measures and popular purges .................. 344
  2.4. Reintegration and the impact of demography and reconstruction ........................................... 348
2.5. Memory eruptions and the prevalence of inclusion and
the national paradigm ................................. 348
2.6. The role of historical and sociological research .......... 349
Abbreviations ........................................... 349
Selective further reading ............................... 350

Comparing Transitional Justice Experiences in Europe
Luc Huyse .............................................. 351
1. Same challenges, but different answers? ..................... 351
   1.1. A devil’s choice: to punish or to let bygones be bygones .... 352
   1.2. Exclusion versus inclusion of perpetrators .................. 353
   1.3. Blending Realpolitik and respect for the rule of law ........ 355
   1.4. Perpetrator- or victim-centered attention? ............... 357
   1.5. To forget or to remember? ............................ 358
2. Contextual factors that shaped policies ......................... 360
   2.1. The preceding regime .................................. 360
   2.2. Earlier experiences .................................... 361
   2.3. The type of transition .................................. 361
   2.4. The international context ............................... 361
3. Similarities ............................................ 363
   3.1. A chaotic start ........................................ 363
   3.2. Pragmatic and adaptive decision-making ................. 363
   3.3. Perpetrator-centered policies ........................... 364
   3.4. Selectivity in accountability and reintegration measures,
       and in reparation policies ............................... 364
   3.5. Politico-strategic concerns dominated .................... 364
   3.6. A long-term process .................................... 364
       3.6.1. What? ........................................... 365
       3.6.2. Why? ........................................... 366
   3.7. Common challenges ...................................... 367
   3.8. The considerable impact of the outside world .......... 367

Transitional Justice and Memory Development in Europe
Nico Wouters ........................................... 369
1. How to approach transitional justice and memory? ......... 369
2. Can we see a sequenced TJ life cycle? ......................... 372
3. What was the impact of the politics of memory? ............. 378
4. What kind of TJ-related issues invoked memory incidents/
   eruptions? ............................................. 386
5. What was the role of local memories; civil society agency and
   memory activism? ..................................... 396
6. How do we explain shifts in memorial regimes? 401
7. To conclude and summarise 408

About the Authors 413