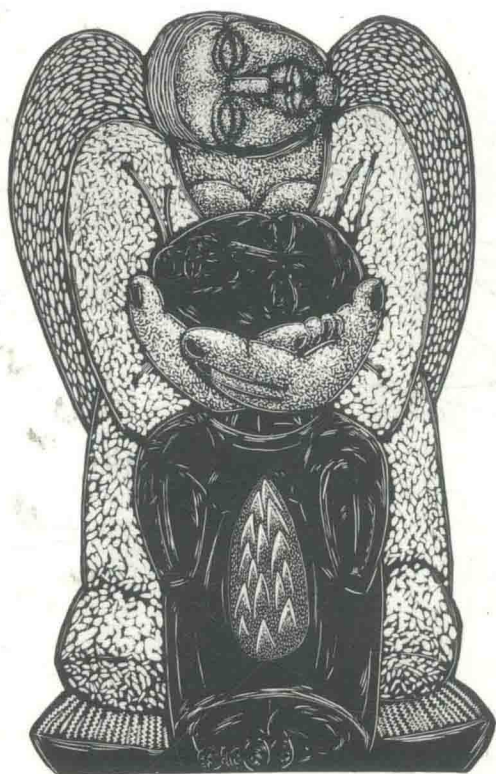


Edited by Agata Fijalkowski and Raluca Grosescu

Transitional Criminal Justice in Post-Dictatorial and Post-Conflict Societies

18

SERIES ON TRANSITIONAL JUSTICE



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TRANSITIONAL CRIMINAL
JUSTICE IN POST-DICTATORIAL
AND POST-CONFLICT
SOCIETIES

Edited by

Agata FIJALKOWSKI
Raluca GROSESCU



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Agata Fijalkowski and Raluca Groseanu (eds.)

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INTRODUCTION*

Agata FIJALKOWSKI and Raluca GROSESCU

This volume critically considers the manner in which post-dictatorial and post-conflict states are addressing past human rights violations through judicial accountability. The book's main objectives concern a fresh, contemporary, and critical analysis of transitional criminal justice as a concept and its related measures, beginning with the initiatives that have been put in place with the fall of the Communist regimes in Europe in 1989. By transitional criminal justice we understand mechanisms of judicial accountability carried out in post-dictatorial or post-conflict states in order to address past human rights abuses. In addition to trials, the concept also refers to cases where criminal law mediates other measures of accountability. The project argues for rethinking and revisiting filters that scholars use to interpret key issues of transitional criminal justice, such as: (1) the relationship between judicial accountability, democratisation and politics in transitional societies; (2) the role of successor trials in rewriting history; (3) the interaction between domestic and international actors and norms in shaping transitional justice; and (4) the paradox of time in enhancing accountability. In order to accomplish this, the volume considers cases of domestic accountability in the post-1989 era, from different geographical areas, such as Europe, Asia and Africa, in relation to key events from various periods of time. In this way the approach, which investigates space and time-lines in key examples, also takes into account a longitudinal study of transitional criminal justice itself.

* This edited collection is the result of a workshop that brought together experts, scholars and practitioners in October 2010 in Bucharest to assess developments and share experiences in the field of transitional criminal justice. We acknowledge the support of the Faculty of Political Science, University of Bucharest and the Konrad Adenauer Foundation, Romania in organising this conference. Agata Fijalkowski gratefully recognises funding from the British Academy Small Research Grant SG-45253 'Crime and Security in Post-Communist Europe' (2007–2008), which supported research in Romania and without which this joint project with Romanian colleagues might not have been possible. Raluca Groseanu is grateful to the Leverhulme Trust which supports her research on transitional justice within the project *1989 after 1989. The Fall of State Socialism in Global Perspective*, carried out by the History Department of the University of Exeter.

1. GENERAL OVERVIEW

Judicial accountability for human rights violations was at the core of transitional justice debates in the first two decades that followed the end of WWII. The Nuremberg and Tokyo trials, as well as the activity of domestic courts in charge with the conviction of crimes against humanity and war crimes committed by the Axis countries, have been the subject of an impressive amount of scholarship. In the aftermath of WWII, criminal trials appeared to be for many researchers the most efficient instrument of transitional justice. However, with the democratisation processes that followed in the 1970s, 1980s and 1990s in Southern Europe, Latin America and Eastern Europe, truth or historical commissions, lustration or disclosure of former political police agents took the lead as instruments of reckoning with the dictatorial past. Criminal trials continued to play a certain role in transitional justice, but in many cases their scope was narrower than the scope of administrative justice, at least as regards domestic accountability. Given the context, the interest of most researchers focused on alternative liability measures than on judicial procedures.¹ The establishment of the international tribunals for former Yugoslavia and for Rwanda reopened the debate about the importance of criminal trials as a method of dealing with past abuses and emphasised the Nuremberg legacy. In fact, the Yugoslav conflict of the 1990s in general elevated criminal justice issues to the universal level based on the argumentation that states had the duty to prosecute.² While the debate took into consideration international justice, domestic accountability continued to be a secondary subject of analysis. While we note that there are a substantial number of excellent publications about successor trials or judicial accountability, these tend to be found in books concerning substantive international criminal law and its principles.³

Instead, most of the recent comparative scholarship regarding domestic accountability in post-dictatorial societies centres more on alternative measures of dealing with the past than on criminal justice. Stan, Nalepa, and Roman⁴

¹ See, for example, the University of Ulster's Transitional Justice Institute's publications at www.transitionaljustice.ulster.ac.uk/index.html (last accessed 29 January 2013).

² ORENTLICHER DIANE F., 'Settling Accounts: The Duty to Prosecute Human Rights Violation of a Prior Regime', *Yale Law Journal*, vol. 100/1991, pp. 2537–2615.

³ See for example SCHABAS WILLIAM A., *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*, Cambridge, Cambridge University Press, 2006; CASSESE ANTONIO, ACQUAVIVIA GUIDO, FAN MARY, and WHITING ALEX, *International Criminal Law. Cases & Commentary*, New York, Oxford University Press, 2011; CRYER ROBERT, WILMSHURST ELIZABETH, FRIMAN HÅKAN, and ROBINSON DARRYL (eds.), *An Introduction to Criminal Law and Procedure*, 3rd edn., Cambridge, Cambridge University Press, 2014; CRYER ROBERT, *Prosecuting International Crimes: Selectivity in the International Criminal Law Regime*, Cambridge, Cambridge University Press, 2005.

⁴ STAN LAVINIA (ed.), *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, BASEES/Routledge Series on Russian and East European Studies, London, Routledge, 2009; NALEPA MONIKA, *Skeletons in the Closet: Transitional*

reflect mainly on lustration and the disclosure of the former political police agents in Eastern Europe. Czarnota, Krygier, and Sadurski⁵ look at the role of the constitutional courts in transitional justice. Mark analyses the politics of memory applied through historical commissions and museums.⁶ Barahona De Brito, González-Enriquez, and Aguilar, or Popovski and Serrano offer valuable insights into developments in Latin America, as well as Eastern Europe, as regards democratic consolidation and its relationship with transitional justice, again focusing more on alternative tools of dealing with repressive legacies.⁷ Most of these works integrate criminal justice into wider accounts of national processes of transitional justice, but they do not provide in-depth analyses of this accountability method.

However, several important works focus on domestic criminal accountability as a response to state crimes during the third wave of democratisation. One of the most comprehensive studies was coordinated in 2000–2002 by Eser, Arnold, and Kreicker.⁸ The study identifies models of criminal accountability or impunity adopted in transitional societies since the 1970s, and examines the factors that influence transitional justice in twenty countries from Latin America, Africa and Eastern Europe. Extensive reports were published in German for several countries, and brief general conclusions were published in English. The investigation focuses largely on the relationship between law and politics during transition periods and interrogates less the impact of criminal accountability on the democratisation process, the rule of law or on the collective memory. Like Elster, Calhoun, and Welsh,⁹ this research identifies the nature of the former dictatorial regime and the political competition of post-dictatorial

Justice in Post-Communist Europe, Cambridge, Cambridge University Press, 2010; DAVID ROMAN, *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*, Pennsylvania Studies in Human Rights, 2011.

⁵ CZARNOTA ADAM, KRYGIER MARTIN, and SADURSKI WOJCIECH (eds.), *Rethinking the Rule of Law after Communism*, Budapest, CEU Press, 2005; SADURSKI WOJCIECH, *Rights Before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe*, Dordrecht, Springer, 2005.

⁶ MARK JAMES, *The Unfinished Revolution. Making Sense of the Communist Past in Central-Eastern Europe*, New Haven and London, Yale University Press, 2010.

⁷ DE BRITO A. BARAHONA, GONZALES-ENRIQUEZ CARMEN, and AGUILAR PALOMA (eds.), *The Politics of Memory: Transitional Justice in Democratizing Societies*, New York, Oxford University Press, 2001; POPOVSKI VESSELIN and SERRANO MÓNICA (eds.), *After Oppression: Transitional Justice in Latin America and Eastern Europe*, New York, United Nations University Press, 2012.

⁸ ESER ALBIN, ARNOLD JORG, and KREICKER HELMUT, *Criminal Law in Reaction to State Crime. Comparative Insights into Transitional Processes*, Project Report, Max-Planck Institute, 2002.

⁹ ELSTER JON, *Closing the Books. Transitional Justice in Historical Perspective*, Cambridge, Cambridge University Press, 2004; CALHOUN NOEL, *Dilemmas of Justice in Eastern Europe's Democratic Transitions*, New York, Palgrave Macmillan, 2004; WELSH HELGA, 'Dealing with the Communist Past: Central and European Experiences after 1990', *Europe Asia Studies*, vol. 48/no. 3/1996, pp. 413–428.

parties as the main factors that influenced accountability for past human rights violations.

Sikkink's work presents a compelling case for criminal trials,¹⁰ arguing first that holding former leaders legally accountable strengthens the chances for a successful transition to a democracy. Secondly, with such trials becoming the norm, the world transforms into a smaller place and provides no shelter for leaders to hide. Sikkink's position places international law as a key player in the process and the preeminent deterrent against such crimes in the future. She also assigns great weight to human rights, and their global, universal effect, a factor that is arguably overstated in her work. Michnik, writing about Pinochet's arrest, correctly draws our attention to the role of the past ('yesterday's ghosts') in the discourses emerging from contemporary events, that revive arguments about the features of the Cold War, the parameters of sovereignty, and 'the conflict between the logic of justice and the logic of compromise'.¹¹ This important question forces us to revisit the question of human rights and its place in transitional justice scholarship. The role of regional human rights is the subject of Buyse and Hamilton's timely book, which focuses on key provisions of the European Convention on Human Rights in the framework of transitional justice and its trajectory along human rights' protection and related narratives.¹² Almqvist and Esposito's work concentrates on developments in Latin America and Spain, and is an important contribution in the area, with its focus on courts in their discussion on criminal prosecutions of war crimes, committed in the context of a repressive and/or on-going conflict.¹³ The investigations are written by practitioners and specialists that lend valuable insight into selected case studies that can form a basis for more analytical examinations of the key questions at hand, such as that undertaken by Skaar, on her comparative study of courts in Latin and South America.¹⁴

McAdams's edited collection¹⁵ focuses on the relationship between judicial accountability and the rule of law in transition periods. While the book is very rich in case studies from the third wave of democratisation, it lacks a conclusion and does not address issues like the role of successor trials in the democratisation

¹⁰ SIKKINK KATHRYN, *Justice Cascade. How Human Rights Prosecutions are Changing World Politics*, New York, Norton, 2011.

¹¹ MICHNIK ADAM, 'Mantra Rather than Discourse', *Common Knowledge*, vol. 8/no. 3/2002, pp. 516–525.

¹² BUYSE ANTOINE and HAMILTON MICHAEL (eds.), *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights*, Cambridge, Cambridge University Press, 2011.

¹³ ALMQVIST JESSICA and ESPOSITO CARLOS (eds.), *The Role of Courts in Transitional Justice. Voices from Latin America and Spain*, London, Routledge, 2012.

¹⁴ SKAAR ELIN, *Judicial Independence and Human Rights in Latin American: Violations, Politics, and Prosecution*, New York, Palgrave Macmillan, 2011. Also SUGARMAN DAVID, 'Courts, Human Rights and Transitional Justice: Lessons from Chile', *Journal of Law and Society*, vol. 36/no. 2/2009, pp. 272–281.

¹⁵ MCADAMS JAMES A. (ed.), *Transitional Justice and the Rule of Law in New Democracies*, Notre Dame, University of Notre Dame Press, 1997.

process or in shaping a collective memory about a traumatic past. Kritz's work¹⁶ also addresses the issue of successor trials in various countries, but it uses descriptive country-reports rather than analytical studies. At the same time, as the book was published in 1995, many changes have occurred in the transitional judicial accountability process worldwide, including the cases analysed in his collection. As we aim to show here, the transitional justice project, for certain states and regions, is ongoing and not restricted to any particular timeframe.

Given the context, our objective is to present a critical and contextual analysis that includes snapshots of domestic accountability from different geographical areas and periods of time, where international (criminal) law may or may not be relevant. The collection makes some rare accounts available to an English-speaking audience. While our chapters seem to be making the usual stops in the specific country's timeline related to addressing past injustices, we aim to explain why these histories are important and what they reveal, but also what they do not show in terms of opportunities and constraints of criminal justice as a means of dealing with the past. In addition, by approaching transitional justice as a longitudinal study, we are in a position to critique the area of transitional justice itself through these cases, all connected by an examination of penal measures used to address past injustices in the post-dictatorship or post-conflict period. As other retributive measures of reckoning with the past (such as lustration or pension cuts) exercise their effect and interrelate with criminal justice, the volume also looks at the interaction between trials and alternative methods of addressing past injustices. In cases like Nepal, Slovenia and Albania, where the legal framework or the political context disabled criminal accountability for gross violations of human rights, the book also analyses complementary forms of accountability that were more profitably pursued.

The country cases have been selected to show different types of non-democratic regimes, extrication paths from dictatorship, and domestic, hybrid, and international forms of justice. We have included various former Communist regimes (from the authoritarian state of Slovenia to the 'sultanist-styled' regimes of Romania and Albania), regimes of occupation (Lithuania), and cases of civil war (the Democratic Republic of Congo, Nepal, Rwanda, Uganda). We also consider a wide-ranging variety of extrication paths: negotiated transitions (Poland, Nepal), replacements through mass pressure (Albania, Romania), transition through absorption (Germany), or international intervention (Rwanda). Most of the selected cases deal with domestic accountability (Albania, Germany, Lithuania, Nepal, Poland, Romania, Slovenia). The relationship between national and international criminal justice is however emphasised

¹⁶ KRITZ NEIL J. (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Washington DC, US Institute of Peace, 1995.

either through cases of 'hybrid justice' (Rwanda, the Democratic Republic of Congo, Uganda), or through the role of judicial regional mechanisms in the national processes of dealing with the past (Germany, Lithuania). Many of the case studies in this book, such as the Albanian, Romanian, Nepalese, and Slovenian experiences, have not been written about extensively in English, a fact that reinforces the originality of the volume.

2. RELATIONSHIP BETWEEN JUDICIAL ACCOUNTABILITY, DEMOCRATISATION AND POLITICS IN TRANSITIONAL SOCIETIES

Within the framework of democratic transition and consolidation, one crucial question is how societies should deal with past injustices committed by the predecessor regime. Studies in transitional justice are generally based on the assumption that various legal responses and measures should be considered on the basis of their prospects for democracy.¹⁷ This then leads to the question of the transformative significance of the law. This debate has centred on a development process that follows one of two strands whose end result is democracy. According to the first strand, specific legal measures are needed to precede political transition. As argued by Orentlicher, Berneman, and Mendez, prosecuting past human rights abuses makes 'good political sense,' as it underlines the fundamental nature of the new political and juridical order and shows discontinuity with the abusive practices of the past.¹⁸ Prosecuting affirms a new order based on the rule of law, on the assumption that 'some rights are so fundamental that they can never be abridged or derogated, not even in an emergency situation that threatens the life of the Nation.'¹⁹ This approach would reinforce people's trust in the sense of justice and undermine the culture of impunity with regard to political crimes and abuses. Transitional justice is also seen as a form of diminishing the strength of the former dictatorial regime's elites. Criminal proceedings will thus put an end to the cycle of violence and to a political culture based on human rights violations. But this should rely on a judiciary that is independent, protected by relevant constitutional provisions and

¹⁷ ACKERMAN BRUCE, *The Future of Liberal Revolution*, New Haven, Yale University Press, 1992; LINZ JUAN and STEPAN ALFRED, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, Baltimore, Johns Hopkins University Press, 1996; HUNTINGTON SAMUEL, *The Third Wave: Democratization in the Late Twentieth Century*, Norman, University of Oklahoma Press, 1991.

¹⁸ MENDEZ JUAN E., 'In Defense of Transitional Justice', in McADAMS JAMES A. (ed.), *supra* n. 15, pp. 1, 15; ORENTLICHER DIANE F., *supra* n. 2; BERNEMAN JOHN, *Settling Accounts: Violence, Justice and Accountability in Post-socialist Europe*, Princeton, Princeton University Press, 1997, p. 6.

¹⁹ MENDEZ JUAN E., *supra* n. 18, p. 15.

statutes, and that has the appropriate legal measures to apply to the peculiar legal questions that arise and the interpretative skills to do so.²⁰ In Fijalkowski's and Černić's chapters, the role of the judiciary is identified as a key feature in the transitional justice discourse, an often-neglected theme.

According to the second strand, political change is necessary before the creation or establishment of the rule of law. Most arguments against judicial accountability warn of the political instability that such measures can engender, especially when the old elites are still controlling the army forces or secret services. This is demonstrated in the Romanian experience, where the transitional justice process was controlled and manipulated by former Communist elites who continued to govern after 1989.²¹ From this perspective, fragile new democracies have to sacrifice justice for peace and stability. 'Justice does not lead; it follows,' assert Snyder and Vinjamuri who assume that amnesties, or simply ignoring the past abuses, may be a necessary tool in consolidating democracy.²²

But does the question stated at the start of this section, as to how societies deal with past injustices committed by the predecessor regime, ever go away? Snyder and Vinjamuri's powerful contention, however convincing, is also challenged. Case studies that demonstrate a perceived silence on the subject might actually be hiding discourses on questions about the past that could result in specific replies to prior injustices. An example is the manner in which certain events (i.e. periods of repression) have been acknowledged more symbolically in the support of a particular category of offences, such as Stalinist or Communist crimes. We need to appreciate the role of time in relation to the involvement of key agents when carefully contemplating this second strand.

The topic is rich, and there is no better place to begin the study than by looking at criminal justice in transition. Classically, successor trials are commonly thought to play a leading role in the transformation to a more liberal political order. Trials are seen as demarcating the line between legitimacy and illegitimacy. Still, tangible challenges arise. Ever important, the contextual analysis shows the differences in conventional understandings of individual responsibility and the development of new legal forms that fall outside the conventional legal categories. This is shown in the Nepalese or Rwandan experiences, presented in this book. This understanding is dominated by punishment, the symbol of accountability and the rule of law. As such, criminal justice, constitutional justice and the rule of law share strong affinities. This relationship is pronounced in transitioning processes towards democracy, such

²⁰ See, for example, SKAAR ELIN, *supra* n. 14.

²¹ See AUSTIN ROBERT C. and ELLISON JONATHAN, 'Albania', in STAN LAVINIA (ed.), *supra* n. 4, pp. 176–199 and GROSESCU RALUCA and URSACHI RALUCA, this volume.

²² SNYDER JACK L. and VINJAMURI LESLIE, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security*, vol. 28/n. 3/Winter 2003/2004, pp. 5–44, at p. 5.

as Rwanda, where addressing past injustice (genocide) formed an important constitutional question, in terms of the role of criminal law in alternative strategies and accountability. This is seen in Sullo's contribution in this volume, but is also examined at the regional level by Pinto Soares, where the concept of complementarity can comprise and effect goals of transitional justice.

The choice of one strand over the other depends on the disciplinary lens or the national response to universal norms. In this constellation, law is the product of politics. Where justice is sought, the discussion best clarifies the developmental process when it treats and recognises the balance of power. Slaughter's work in the area reveals the importance of explaining the law's role during times of political change, and the location of justice in a process where the relationship between past injustice and a state's promise as a liberal democracy are in the spotlight.²³ Her work took on resonance in the area of international law and international relations following the collapse of Communism. In contrast to the position asserted by key thinkers in the area, the failure of the Communist project does not immediately translate into a victory for democracy, as argued by Fukuyama in 1989.²⁴ Part of the discussion considers the role of human rights, as an important global actor, and one that is certainly linked to democratic and the transitional justice process, but requiring a much more critical examination.²⁵ It is clear that the study of transitional criminal justice necessitates a slight shift in the way we examine and perceive these processes. As shown in these case studies, prosecutions do not form part of the state's process of transitioning towards democracy, and could, in fact, occur years later, such as in the selected Central and Eastern European states found in this collection (Fijalkowski; Čerņić; Lipinski and Elbasani; Žalimas).

Another critique regarding the positive role of criminal trials in the democratisation process is that transitional justice often becomes a potent political tool, instrumentalised and manipulated in the strategic interests of various actors.²⁶ On the one hand, as shown in Lipinski and Elbasani's contribution in this book, the Albanian process of reckoning with the past became 'almost the property of few anti-communist forces' and was misused in order to delegitimise political opponents. On the other hand, remnants of

²³ SLAUGHTER ANNE-MARIE, 'International Law and International Relations: A Dual Agenda', *American Journal of International Law*, vol. 87/n. 2/1993, pp. 205–239.

²⁴ FUKUYAMA FRANCIS, 'The End of History', *The National Interest*, Summer 1989, available at www.wesjones.com/eoh.htm (last accessed 21 January 2013). Also by the same author, *The End of History and the Last Man*, New York, Free Press, 1992, and *The Origins of Political Order: from the Industrial Revolution to the Globalization of Democracy*, London, Profile Books, 2014.

²⁵ Such as SIKKINK KATHRYN, *supra* n. 10.

²⁶ See for example WELSH HELGA, *supra* n. 9; KISS CSILLA, 'The Misuses of Manipulation: The Failure of Transitional Justice in Post-communist Hungary', *Europe Asia Studies*, vol. 58/no. 6/2006; ŁOŚ MARIA and ZYBERTOWICZ ANDREJ, *Privatising the Police State. The Case of Poland*, Baltimore, John Hopkins University Press, 2000.

dictatorial rule, still apparent and existing as both visible and hidden actors,²⁷ affect the manner in which accountability is addressed. In the Polish and Slovenian case studies (addressed by Fijalkowski and Čer nič respectively) the politicisation of legal issues hinders progress with respect to the criminal prosecution of important cases of egregious human rights violations. Grosescu and Ursachi's analysis contributes to the debate by identifying ways in which the judicial accountability for crimes committed in December 1989 in Romania was shaped by the political interests of various post-Communist elites.

These accounts show how the concept of justice in periods of political change is extraordinary, constituted 'by, and constitutive of, the transition'.²⁸ This is also observable in the way various states understood the rule of law in transition period and tried to reconcile law as written and law as right, procedural and substantive justice. Since the end of WWII, this issue is at the core of transitional justice, opposing legal positivists and advocates of natural law. One could argue that Gustav Radbruch, and his reply to the atrocities committed under Nazi rule, revealed the failure of legal positivism and supported the rethinking of the role of natural law. In fact, Radbruch's work has not only been re-visited over the years by leading legal thinkers, such as Hart, Fuller, Alexy, or Paulson, but has also been developed by courts and experienced a sort of cross-pollination in cases that struggle with retrospective justice.²⁹ The German experience from the WWII, the 1945–1949 Nuremberg trials, and the East German experience in the *Border Guards* cases in the 1990s, have all provided a basis for decision-making and debate in post-Communist states.³⁰ Scholars who have examined these cases point to different accounts of justice that either succeeded or failed in meeting the expectations of lawyers and society.³¹ And the controversy continues at the European level; the regional human rights regime is having an effect on the transitional justice process, and underpins most of the contributions in this book.³² Various chapters (Fijalkowski, Čer nič, Žalimas) address the topic and

²⁷ See PODGÓRECKI ADAM and OLGIATI VITTORIO (eds.), *Totalitarian and Post-Totalitarian Law*, Aldershot, Dartmouth Publishing Co., 1996.

²⁸ TEITEL RUTI, *Transitional Justice*, New York, Oxford University Press, 2000, p. 6.

²⁹ See KÜNZLER ADAM, 'Judicial Legitimacy and the Role of Courts: Explaining the Transitional Context of the German Border Guard Cases', *Oxford Journal of Legal Studies*, vol. 32/2012, pp. 1–33; QUINT PETER E., 'The Border Guards Trials and the East German Past – Seven Arguments', *American Journal of Comparative Law*, vol. 48/2000, pp. 541–572. See also PAULSON STANLEY L., 'Lon L. Fuller, Gustav Radbruch and the "Positivist Theses"', *Law and Philosophy*, vol. 13/1994, pp. 313–359; HART HERBERT L.A., 'Positivism and the Separation of Law and Morals', *Harvard Law Review*, vol. 71/no. 4/1958, pp. 593–629 and FULLER LON L., 'Positivism and Fidelity to Law – A Reply to Professor Hart', *Harvard Law Review*, vol. 71/no. 4/1958, pp. 630–672.

³⁰ See SADURSKI WOJCIECH, *supra* n. 4.

³¹ An interesting position but one that is outside the scope of this book is found in POSNER ERIC A. and VERMUELE ADRIAN, 'Transitional Justice as Ordinary Justice', *University of Chicago Public Law and Legal Theory Working Paper No. 40*, March 2003.

³² BUYSE ANTOINE and MICHAEL HAMILTON (eds), *supra* n. 12.