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TRANSITIONAL JUSTICE IN MULTIPLE TRANSITIONS: CASE STUDY OF CROATIA

MA thesis

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I have written this Master's thesis independently. All viewpoints of other authors, literary sources and data from elsewhere used for writing this paper have been referenced.

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Abstract

The aim of this thesis is to establish a novel framework in the study of transitional justice. It is concerned with cases where there are more transitions that happen in the same country. So far, these cases have mostly been studied in part, without looking at the whole process. They should be studied with all the possible transitions and transitional justice contexts looked at side by side, and with a model which allows a comparison along the same conceptual lines.

Some possible ways multiple transitions could influence transitional justice are laid out. They could hinder the process by working against each other and not allowing the state to adequately process any of them. Some contexts could also be ignored because of the continuity in the political elite that exists between those contexts and the democratic regime. Or, one context could take over the whole process and not allow the other contexts to be adequately processed. Another phenomenon that could occur is the mixing of different contexts in the process of transitional justice, which can be observed when single policies are used to deal with issues from distinct contexts.

This new framework is then applied to a case study of transitional justice in Croatia, which experienced post-communist, post-authoritarian and post-conflict transitional justice. Measures relating to the three contexts are presented, and categorized according to their aim and type. Measures can be aimed at either perpetrators or victims of crimes, and they can be criminal-judicial, political-administrative or symbolic-representational in nature. In the post-communist context, they can also be distinguished according to the period they are meant to tackle.

The patterns across the contexts are then compared and contrasted. It is found that the most important factors which determine transitional justice are the degree of continuity of the political elite and the existence of external pressure to undertake transitional justice. Enough connections between the contexts were arguably found to justify the separate conceptualization of transitional justice in multiple transitions.

Table of Contents

1. Introduction

Transitional justice is an established concept in political science with a plethora of scholars, works and even specialized journals devoted to the study of it. It has been studied in connection to many different countries and regions around the world, which has contributed to the rich empirical variety that can be found in transitional justice literature. Another fact which has contributed to this variety is the diversity of contexts to which the concept has been applied to, with communism, authoritarianism and civil conflict providing very different challenges. But, there has been little reflection on the relatively uncommon situation where these contexts become mixed together.

Therefore, a new paradigm of transitional justice is proposed here, which is transitional justice in multiple transitions. To show the usefulness of this new concept in transitional justice study, it is applied to the case of Croatia, which provides an interesting test case for this new paradigm. To this end, an analytical model of transitional justice developed by Eva-Clarita and Vello Pettai (2015) for the study of post-communist transitional justice in the Baltic States is utilized. This "matrix of transitional justice" is applied to three different transitional justice contexts in Croatia, which are then considered together.

Even though the situation that is encountered in Croatia is somewhat unique, it is not incomparable to the situations in some other states. This paradigm is not simply an *ad-hoc* solution for a complicated case, but could be applied to other cases as well. More importantly, these cases cannot be properly analyzed if some parts of the overall process are disregarded. That is why transitional justice in these cases can only be understood if all the different contexts are examined together. That is why it is argued here that transitional justice in multiple transitions should exist as a separate framework for research, which could potentially improve the overall study of transitional justice as well.

2. Central Concepts

2.1. Transitional Justice and Types of Transitional Justice

Before turning to the case-study of transitional justice in the context of multiple transitions, it is important to state what transitional justice refers to, how it is usually understood and how the term will be used here. Transitional justice refers collectively to measures employed over a certain period of time by states and international actors to deal with serious examples of human rights abuses, widespread oppression or war crimes perpetrated by previous regimes, authoritarian or totalitarian, as well as warring parties in a civil conflict. Transitional justice is mostly found in the context of democratization, a process of transition to a democratic state, which by no means has to be completed for transitional justice to take place. There are different ways that the establishment and later consolidation of democracy can figure in transitional justice. But, democratization is a part of the conceptualization provided here because a politically controlled, legal and popularly legitimate process is implied for transitional justice, at least in the understanding of the process advanced here. It is possible to have a process that tries to address previous wrongdoings and to some degree fulfills those conditions but is carried out in a non-democratic context. This should not be recognized as transitional justice in its full sense if it is carried out in the same circumstances as the injustices that made it necessary in the first place. In any case, it is important to delineate what an ideal-type transitional justice process would look like, in order to apply this understanding in a case study and judge how it was enacted in that instance.

The definition just laid out here is in line with most previous scholarship on transitional justice. But, there are non-trivial differences in how the concept is handled by different scholars. Ruti G. Teitel (2003) defines transitional justice as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes”. The International Center for Transitional Justice puts forward this definition: “the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations” (ICTJ, 2011). The difference between those two definitions is that the former refers only to instances of political change, the “transition” in question, while the latter explicitly includes

instances of conflicts as well. This is an important distinction for the purposes of this study, because it seeks to combine different contexts where the concept is studied, while most studies focus on one, and their conceptualizations are therefore formed against the backdrop of that context.

The discipline of transitional justice is a relatively "young" one. It first entered into use in the 1990s and has only fully emerged in the 2000s as a developed field in political science (Bell, 2009). The first scholar to employ the term in that form and further its acceptance was Neil J. Kritz in 1995 (Pettai and Pettai, 2017, Arthur, 2009). By no means does this imply that transitional justice wasn't around before then as a practice, but it wasn't yet studied in a thorough and scientifically consistent way. Once that changed, it opened the door for a number of studies that greatly deepened the understanding of the process in practice, and added much needed thickness to the concept.

Precursors to the practice of transitional justice can be found very deep in the past, depending on how far into history one looks. In what Arthur (2009) would call an "anachronism", Jon Elster, in his groundbreaking study of the past and present of transitional justice (2004, p 3), locates its place of origin in Ancient Greece, stating that "democratic transitional justice is almost as old as democracy itself". Even though his analysis is engaging and valuable, it is perhaps more fruitful to bound the idea in a modern setting. In that case, the beginning of "modern" transitional justice should be established as the period just after World War II. Ruti Teitel (2003) traces it to World War I, but states that transitional justice becomes understood as "extraordinary" in the postwar period after 1945. This begins what is in her approach termed "phase I" of transitional justice. If this view is followed, the monumentally important Nuremberg Trials held from 1945 to 1946 could be considered a founding event. They established a framework of how to deal with the legacy of a past regime in a novel way. According to Brants and Klep (2013), most legal scholars would agree that the Nuremberg Trials' greatest achievement was the recognition of "crimes against humanity". This ushered in a new, international form of justice. That is why Teitel (2003) believes that transitional justice becomes understood as both extraordinary and international after 1945.

The Nazi regime's influence was deemed so pervasive that it required a restructuring of society to deal with. The Nazi regime left a wide array of wrongdoings in its wake, not limited to the well-known human rights abuses it perpetrated. Furthermore, it left its influence in many different facets of society, which is why the process of "denazification" required much more than simple trials and convictions. That being said, the ambitiously conceived denazification was tempered very quickly. The process was handed over to the German State after being first started and conceived by outside forces. The Germans lost interest in handing out more punishments, and it became obvious that it would be quite impractical to purge everyone with any connection to the Nazi Party. The fast-changing geopolitical picture had something to do with it as well. By 1947, the US' main interest turned from punishing the Nazi offenders to an economic restructuring of Germany, required to battle the Soviet threat (Elster, 2004, pp 198-199). Still, these extraordinary efforts of dealing with the past, or *Vergangenheitsbewältigung*, as it is known in Germany, created a template for a process which would later come to be known as transitional justice.

Another important landmark for the development of transitional justice has been the fall of Communism in Eastern Europe, but also elsewhere. In Teitel's (2003) view, this is a part of phase II of transitional justice. Even though it can be referred to as a single event, it was in fact a long process symbolically started in 1989 with the fall of the Berlin Wall, and which then took many different forms over the years. It was also a process which happened in many different countries, and therefore the transition to democracy varied considerably according to the specific needs and problems each country faced. Nevertheless, Communism left a specific legacy that required certain measures which were similarly applied across post-communist countries, especially the ones which were successful in administering justice and bringing to light the misdeeds of the former regimes. The post-communist context was the first time that transitional justice was needed on such a large scale. And unlike 1945, the successor regimes were mostly in charge of bringing justice themselves. It was also an emergence of a large number of cases fit for comparative analysis (Pettai and Pettai, 2017). It is most likely not a coincidence that transitional justice as a discipline took off right around the time that so many countries were emerging from

decades under communist oppression. Also, post-communist transitional justice efforts have been somewhat distinct from the rest of the field, and the research focused on it is similarly apart from other transitional justice research. Some scholars opt to use the specialized term “decommunization”, describing a general process of parting with a communist heritage without referring to wider transitional justice (Sadurski, 2005, Czarnota, 2009, cited in Pettai and Pettai, 2017). Even so, post-communist transitional justice can be thought of as a distinct transitional justice context, but squarely within the overall field.

These are some of the “canonical” examples of transitional justice. But they are not the only ones. There have been authoritarian regimes over the last few decades which have also left legacies of oppression requiring transitional justice. Most of this transitional justice would fall under phase II since this phase is closely connected to Samuel Huntington’s third wave of democratization (Teitel, 2003). But it is not strictly tied to it, since there have been democratizations from authoritarian regimes both before but more importantly after the third wave of democratization. De Brito, Aguilar and González-Enríquez (2001) write about three waves of transitional justice, where the first is the post-World War Two period, as in Teitel’s periodization, but what Teitel calls phase II is separated into two distinct phases in their model. The second phase is the post-authoritarian turn in Europe in the 1970s in Spain, Portugal, Greece, etc. Curiously, the authors choose not to group the Latin American post-authoritarian transitions that begin in the 1980s together with the European ones from the previous phase, but see them as the beginning of the third phase. This phase then continues with the transition from Communism in Europe and later the various transitions to democracy in Africa and Asia.

While authoritarianism traditionally implies limited freedoms for its citizens and is similar in that way to the other repressive regimes that were discussed, it still presents different challenges. It does not usually imply as much widespread and overt oppression as Communism or other totalitarian regimes (Pettai and Pettai, 2017). For example, concentration camps or wholesale deportations of millions of people are crimes against humanity of a different order than the oppression that can be observed in most authoritarian regimes. What this means is that there is also something that can be called post-

authoritarian transitional justice, with its own challenges and approaches. De Brito, Aguilar and González-Enríquez (2001) give a good overview of the field, with some possible hypotheses about truth and justice after authoritarianism.

The final piece to add to this list is the least obvious one, but nevertheless an established paradigm within transitional justice. After certain conflicts or wars, especially of a civil war nature, there is a need for a deep reevaluation of everything that was committed in the name of both sides after the fighting is over. This means looking into all the actors involved, both military personnel as well as political leadership, taking heed of and airing grievances from both sides, and perhaps reevaluating historically the conflict in light of what is concluded, both judicially and politically.

It is true that the aftermath of armed conflicts is hardly a political transition in the same vein as democratization, especially if it is not followed by a regime change. Binningsbø et al. (2012) prefer to think of this as "post-conflict justice", a different concept but still a specific subset of transitional justice. Mobekk (2005) emphasizes that transitional justice in post-conflict societies requires reconciliation as well as justice, and that those are not always compatible.

But there are arguably enough parallels between the processes that it is justified to include them under the same heading. If the processes in practice resemble each other to a satisfying extent, and if the study of the different contexts can pragmatically inform and improve each other, it should be enough to warrant the conceptualization. Besides, this conceptualization is extremely widespread and accepted. The ICTJ in their introductory text to transitional justice (2011) briefly consider the "transition" question. In short, it is unimportant in their view. The bigger question is whether an opportunity, even a limited one, has arisen to "address massive violations".

This kind of "thin" conceptualization is more common to practitioners in the field than more theoretically inclined authors, who are on the whole perhaps in the minority. De Greiff (2012), for instance, would argue that the field as a whole is "undertheorized", and attempts to improve on this by grounding the issue with certain normative conceptions. He provides a holistic normative conception of transitional justice that has as its "mediate

goals" providing recognition to victims and fostering civic trust, while aiming for reconciliation and democracy as final goals.

Other authors also believe that reconciliation can be thought of as an aim of transitional justice (Mobekk, 2005, Teitel, 2003), but de Brito, Aguilar and González-Enríquez (2001) believe that putting reconciliation as a goal creates very high expectations, which will often not be met. It is better, in their view, to talk about the relationship between justice and the strengthening of democracy, the second of de Greiff's (2012) final aims of transitional justice. The effects of transitional justice on democracy will not be examined in-depth here as they are a separate, complicated topic in themselves. Even though the assumption that transitional justice will aid democratization is an easy one to make, perhaps it is not necessary for the legitimacy of transitional justice as a process, after all, de Brito, Aguilar and González Enríquez (2001) and de Greiff (2012) agree that its contribution to democracy is modest. De Greiff (2012) states that transitional justice should be understood as a tool for democracy, and democracy is valuable both as a means and inherently, as an expression of individual autonomy. But perhaps it could be argued that transitional justice can have an inherent value as well, even without its possible contribution to the establishment of democratic norms, a worthy goal nonetheless.

2.2. Transitional Justice Measures

After transitional justice has been defined as a set of measures, it is important to bring out what those measures actually are. There are many different policies which could be considered here, and it is important to note that different transitional justice contexts don't always include the same measures. Rather, many are generally found only in one context. Some measures are universal and can be found across cases, but some are more specific to the type of transition that occurred.

The former UN Secretary General's Report "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" (cited in De Greiff, 2012) gives a good foundation for understanding what transitional justice is, and what kind of policies make it up. It mentions criminal justice, truth-telling, reparations, and vetting. What is important is that all these measures are holistically considered. They are not isolated pieces of policy,

but should be thought of as parts of a whole. Binningsbø et al. (2012), writing specifically about post-conflict transitional justice, investigate the instances of trials, truth commissions, reparations, amnesties, purges and exiles. De Brito, Aguilar and González-Enríquez (2001) focus mainly on truth commissions, trials and amnesties and purges, and to a lesser extent policies of compensation, restitution or reparation. Brants and Klep (2013) focus on two somewhat special instruments of transitional justice, also mostly utilized in post-conflict societies. These are truth commissions and international criminal trials. Pettai and Pettai (2015) are perhaps most thorough here, dealing with most of the measures already enumerated and others, such as commemorations and exposure of past wrongs.

The ICTJ (2011), on the other hand, talks about four "approaches", which should indicate a different conception. They don't consider them completely distinct from each other, stating that they are not "alternatives for one another", but that they have somewhat different aims. Pablo de Greiff in his insightful article "Theorizing Transitional Justice" (2012), seeks to theoretically ground the notion that transitional justice can only be thought of as the sum of the parts, of the "approaches" together.

A lot of measures of transitional justice belong squarely in the domain of regular judicial procedures that comprise rule of law in many countries, such as trials, rewarding of damages to victims, or restitution of property. Other measures are more out of the ordinary, such as the previously mentioned "truth commissions", sometimes referred to as "truth and reconciliation commissions", after the one formed in South Africa in 1995. Coming right after the end of Apartheid, its task was to hear out individuals accused of perpetrating injustice and hear out the victims of those injustices. It was not the first truth commission of its kind, being inspired by the one in Chile a few years earlier (Brants and Klep, 2013), but it took the concept much further. It was groundbreaking not just because of its larger reach, funding and mandate, but because of the public nature of those hearings. And more importantly, it had the possibility of handing out individualized amnesties to perpetrators. That is where it differed from most truth commissions (Brants and Klep, 2013).

Another interesting political tool of transitional justice is what is referred to as purges. They entail the removal of civil servants from office. Bureaucrats and other state

employees of varying seniority who are judged to be "tainted" by their connection to the former regime are fired and are not given new job opportunities in the civil service. The line of distinction can often be very hard to determine here, as the question of guilt is a tricky one. Does simply working for a state which is run by a repressive regime or being a member of a party supporting a totalitarian state automatically equal guilt? Perhaps collective guilt applies only if the officials in question were employed by an institution which was directly responsible for crimes, such as a secret police in communist states. Due process problems have plagued states which institute purges. In Eastern Europe, these purges were often not part of a democratization effort, but simply political power struggles between different parties (De Brito, Aguilar and González-Enríquez, 2001).
Different states had different ways of dealing with this over the years. A purge in the form of first letting go and then putting a ban on employing former regime party members had been used very prominently in denazification in Germany as well as Austria. A similar policy was attempted in Iraq after the removal of Saddam Hussein, where it was called "de-Baathification" after the governing Ba'ath party (Pettai and Pettai, 2015, p. 136).

States can sometimes put a moratorium on employing people they deem responsible for the previous regime's transgressions. This measure belongs to the complex set of measures under the umbrella of "lustration". Lustration is often seen as a single issue, but it can actually be parsed into several smaller units, as shown by Pettai and Pettai (2015, pp. 119-125). This is preferable because the term itself has taken on several different meanings and can be imprecise. The word comes from the Latin "to cleanse", and is meant to denote the "cleansing" of a new system from the detrimental influence of the older one. In addition to purging and excluding, it can also entail exposing those working in the public sector, or even prominent private sector individuals for their ties to the previous regime. Individuals with "detrimental" ties to the former regime can also be prevented from entering political life, as this is an area where they can have a most profound impact on nascent regime. A "lighter" version of a lustration law might require only self-reporting of misdeeds or questionable ties, or it could require an "oath" be taken which guarantees that the one taking it has a "clean conscience" when it comes to the former regime. This oath can also be ensured by punishment in case of perjury.

A larger set of measures and issues that are sometimes neglected because of their relatively smaller political and perceived lesser importance are what could be termed symbolic measures of transitional justice. These measures do not convict anyone in particular, they don't involve judicial processes or monetary awards. They involve the mere recognition that certain people were victims of oppression or that certain regimes were guilty of misdeeds. They could be anything from erecting a small statue to recognize the victimhood of any number of individuals to issuing a parliamentary declaration condemning a regime lasting more than half a century.

Criminal trials and international criminal tribunals have already been briefly mentioned in regard to Brants and Klep's (2013) article. They talk specifically about international criminal trials, which are in many ways different to "domestic" criminal trials. Brants and Klep (2013) are more interested in the truth-finding or truth-establishing aspects of international tribunals, while criminal trials in general usually have the more narrowly defined mandate of establishing guilt beyond a reasonable doubt. Brants and Klep (2013) believe that this, as well as their adversarial nature makes them unsuited for promoting reconciliation. The internal dynamics of criminal trials is something that won't be covered here at length, as they are one of the most common tools of criminal justice. Although they are similar in nature around the world, they do take different forms depending on the type of law present in a country. In any case, perpetrators of past crimes are sometimes brought to trial as part of transitional justice efforts. Prominent examples from post-communist transitional justice include the trials of Alfons Noviks in Latvia, Wojciech Jaruzelski in Poland and Erich Honecker in Germany (Pettai and Pettai, 2015, pp. 65-66).

This is a measure of comparatively high impact yet potentially high political cost, which is why it is not very common, especially for lower level offenders. International criminal tribunals have become more common in recent years and in some ways, they were created specifically for transitional justice efforts by the international community. Their purpose is to bring to trial major offenders from specific conflicts or events. As such, they are aimed at bringing perpetrators to justice, and not giving justice to victims. Victims are used as witnesses, who provide both proof but also a political history of the events in question. The International Criminal Tribunal for the Former Yugoslavia (ICTY) was such

a body, created specifically for all crimes committed during the Yugoslav War (Brants and Klep, 2013). The ICTY existed from 1993 until 2017, when it concluded all the investigations and trials it undertook.

The policies that have been covered in this section so far can seem somewhat disparate, when presented in an unstructured manner. Therefore, they should be ordered in a typology or a matrix, so that their interrelationship can be better observed. This should be done first before any kind of measurement of their impact can take place. And if precise measurement is too ambitious a goal for a phenomenon as elusive as transitional justice, then at least a systematized description of the types of transitional justice found in a country, in comparison to other countries.

There have been different attempts at structuring a systematic typology of transitional justice over the years. Brian Grodsky (2009) presents an interesting and original take on transitional justice with his "transitional justice spectrum". He hierarchically ranks seven possible transitional justice measures according to two variables, the severity of their repercussions and the personalization of responsibility. They are, from least to most severe, in order: cessation and codification of human rights abuses, condemnation of the old system, rehabilitation and compensation for victims, creation of truth commissions, purging human rights abusers from public function, criminal prosecution of "executors", and criminal prosecution of commanders. As can be observed from the listed measures, this is a very inventive attempt at operationalization and comparison of policies which can be quite different in nature. Assigning weight on a scale as Grodsky (2009) does is a good way to start comparing the various degrees of transitional justice found across countries. But there is a downside to the comparison he attempts. While there is no reason why this spectrum couldn't be expanded and more policies of different types added to it, it is still somewhat constraining. By leaving room for only a single axis, it sometimes tries to compare the incomparable. There are policies that, even though they both belong to transitional justice, are different in aim and perhaps shouldn't be stacked up against each other on a scale of severity. Also, the variety found within seemingly the same policy should be investigated. What Grodsky (2009) calls "rehabilitation and compensation of victims" can empirically

take different forms. Some purges are more extreme than others, and some perhaps just take different forms, without being more or less exhaustive. Contrasting how states go about instituting similar measures and the different routes their approaches take can be done without the need for outright placement on a scale. Still, this approach opens up some very interesting ways to think about the connections between different aspects of transitional justice. It is generalizable and easily applied to many contexts, which is why Grodsky (2009) adds that it is very useful in large-N studies, where there might not be enough data for in-depth analysis.

One of the most widespread and widely accepted typologies of transitional justice measures is that between retributive and restorative justice (Pettai and Pettai, 2015, Grodsky, 2009, Teitel, 2003). This dichotomy is used more widely, in criminal justice in general, but in a slightly different context. As is obvious from the name itself, retributive justice refers to a type of retribution against the perpetrators of injustices, while restorative justice deals with alleviating the suffering of victims. To put it in other words, the latter tries to give, while the former tries to take away. This is a good start for understanding what kind of tools are at the disposal of governments or other actors who wish to come to terms with the past. Nevertheless, this distinction is still a bit too vague and not yet really informative enough to construct a whole typology.

Other authors (Kritz, 1995a, Bisset, 2012, cited in Pettai and Pettai, 2015, pp. 15-16) have brought out some subtler features, such as the fact that measures can be criminal or non-criminal and judicial or non-judicial. These are similar distinctions, based on whether the measures involve criminal law or judicial proceedings. Claus Offe (1992, cited in Pettai and Pettai 2015, p. 16) was perhaps the first to bring the previous two distinctions together and consider the connections between them. He comes up with three types of categories: punishment and deprivation aimed at actors (or perpetrators), dealing with criminal and civil law respectively; and compensation, aimed at victims and dealing with civil law. He doesn't find a category aimed at victims and dealing with criminal law. Offe later reworked his typology, writing with Ulrike Poppe (Offe and Poppe, 2005, cited in Pettai and Pettai, 2015, pp. 17-18), adopting instead of a civil vs. criminal law dichotomy one between legal and political sanctions. This is a welcome development, as there are a

plethora of non-legal measures to be found in transitional justice processes, some of which have already been covered here, and which should definitely be included in a comprehensive typology. Focusing strictly on measures which fit into the civil vs. criminal law dichotomy runs the risk of obscuring a large part of the overall picture.

2.3. Matrix of Transitional Justice Measures

Most of the considerations previously covered are brought together by Pettai and Pettai (2015, pp. 21-32), first in an integrated model of measures, which places these measures into 6 categories according to two dimensions: who the measures are aimed at, and what they call "substantive levels of truth and justice". They later develop this in their matrix of post-communist transitional justice, which lists all the measures that could be found in their empirical example of post-communist transitional justice in the Baltic States. In their matrix, they include the temporal aspect of retrospective vs. transitional justice that is left out of the integrated model. Here, for the sake of simplicity, the temporal aspect is added to their integrated analytical model, and it is included in Table 1. Their model provides a good insight into the combined patterns of transitional justice in a given country, which is why it will be used for the empirical case study included here.

Table 1. Adjusted integrated analytical model of truth and justice measures.

	Perpetrators		**Victims**	
	Retrospective	**Transitional**	**Retrospective**	**Transitional**
Criminal-judicial	Trials		Rehabilitation	
Political-administrative	Purges/vetting		Compensation/restitution	
Symbolic-representational	Voluntary self-reporting		Recognition/truth telling	

(Pettai and Pettai, 2015, pp. 21-32)

In the next part, the focus will be on the typology of transitional justice laid out in Table 1, and the categorization contained therein. First, the top row which divides measures according to who they are aimed at. While it doesn't exactly correspond to the retributive and restorative dichotomy that was mentioned earlier, the difference between transitional justice aimed at perpetrators versus that which is aimed at victims is similar. This is the first

step in breaking down all the measures found across cases, and while this is not its only point, it can already lead to some interesting observations. When an overwhelming number of policies embraced in a certain country fit into one or the other, some inferences about the transitional justice process in said country can already be made. For instance, if there is a strong tendency to put perpetrators on trial (the first box under perpetrators in Table 1), it can be supposed that the regime change was quite exceptional. Huntington (1991, pp. 230-231, cited in Grodsky, 2009) states that elites who rise to power through revolutions are most likely to institute such measures. Pettai and Pettai (2015, p. 33) note that it is often hard for democratic leaders to criminally prosecute recent leaders of a non-democratic regime. Usually the erstwhile oppressors have some chance of taking part in the political process, where they can enjoy some protection, perhaps in terms of influence, but also for example parliamentary immunity. They can enjoy protection even when they do completely exit political life. In many cases, these ex-leaders will negotiate some form of amnesty for themselves before leaving power (Pettai and Pettai, 2015, p. 33). The extreme version of protection from future prosecution is the blanket amnesty for all offenders that can be found in some post-authoritarian South American countries. In some cases these were even "self-amnesties", since the departing regimes legally shielded themselves from prosecution (Mallinder, 2016).

As has been stated earlier, reconciliation can be thought of as a goal of transitional justice. But another one of its goals that should be considered is contained in its name, and that is justice. According to de Greiff (2012), justice can in this context be understood as "giving everyone his or her due". Admittedly, this conception of justice can sometimes be in conflict with reconciliation. It can be said that states which observe the kind of amnesties that have been mentioned earlier heavily favor reconciliation over justice. Or to borrow Teitel's (2003) phrase, they "trade justice for peace". And for a while, it was seen as a successful approach. But, in the South American context at least, they have recently been subject to questioning several decades after the actual injustices were committed, and the legal challenges to them have been somewhat more successful (Mallinder, 2016).

This is in contrast to the type of transition that occurred in countries such as Serbia or Poland, which experienced a "negotiated transition" (Grodsky, 2015). It is a process

where the ruling elite enter into negotiations with the opposition, and where they try to come to a compromise about the future of the country. Another version of this is the elite-led transition, where members of the old regime control the change to democracy (Huntington, 1991, pp. 230-231, cited in Grodsky, 2009). Often when this happens, members of the former governing party or ruling elite take part in the governing process and are somewhat safe from prosecution, especially for minor offences. This is the case in the very aftermath of the transition, but does sometimes change later on. In Serbia's case, it changed because of external pressure to cooperate with the ICTY from the international community (Grodsky, 2015).

In this constellation, the state will perhaps favor either rehabilitation of victims (the first box under victims in Table 1), or giving some rewards or recognition to victims (the second and third box under victims, respectively), in some ways a milder and less "aggressive" form of transitional justice. Grodsky (2009) presupposes that these measures have a lower political cost and will thus be applied quite often and widely. They are usually easier to put in place, and are less fraught with conflict which means that consensus about them in public and in legislative bodies can be reached with less effort.

These are some of the inferences that can be made from possible permutations of the perpetrators vs. victims dichotomy in the analytical model laid out in Table 1. Of course, the dichotomy is useful in itself just for the analytical clarity it provides for categorizing measures, it should not always lead to any far-reaching conclusions. In fact, even if it is found that both sides look roughly the same in terms of the amount of measures, it should not be too surprising. After all, it could be likely that countries which are successful at introducing one type of transitional justice would be successful with the other type as well, while keeping in mind the relatively lower cost of victim-oriented measures as posited by Grodsky (2009).

The next row down in the matrix is a temporal aspect of transitional justice, the dichotomy of transitional and retrospective justice. There are two main characteristics of that distinction, according to Pettai and Pettai (2015). Firstly, retrospective justice concerns offences that happened in the more distant past in relation to the transition, while

transitional to more recent ones. But more importantly, transitional justice is also in the service of securing the democratic transition. So if it is aimed at offenders, it is aimed at offenders that could potentially endanger democratization. Retrospective justice does not entail this function, it is sometimes tasked with administering justice where both the perpetrators and the victims are long gone.

It is not always clear where the difference is between the two. Sometimes they might even intersect, as Pettai and Pettai (2015, p. 25) demonstrate with the example of Erich Mielke, the East-German Stasi chief who served in that capacity right up to 1989. Since he was an official in the East-German regime basically until its end, his prosecution should fall under transitional justice. Yet, as he was tried after reunification for a crime that happened as far back as 1931, it would appear a case of retrospective justice. In reality, prosecutors simply tried him for the crimes that they were most likely to secure a conviction for, which were the older ones, but they still could have been acting with the unpronounced intent to secure the democratic transition.

This dimension is in some ways a bit of a departure for transitional justice. First of all, since the other part of the distinction is called transitional, it could be assumed that retrospective justice in fact does not properly belong in a discussion about transitional justice. But this is not so, as the terms are very closely connected and their relationship can be understood in a number of ways. Since Pettai and Pettai (2015) call their overall field of study the politics of truth and justice, transitional justice and retrospective justice can be considered two equal subtypes of a temporal dimension. With politics of truth and justice, they refer to "the struggles waged by political and social actors to influence the role the state plays (a) in setting prevailing truth discourses about a nondemocratic past and (b) in passing measures to enact some interpretation of justice in relation to this past" (Pettai and Pettai, 2015, p. 6). In many ways, the second part of their definition corresponds to what has here been called transitional justice so far. The first part of the definition makes the object of analysis a little wider, and takes it into the domain of "memory politics", a separate, but closely related field. Still, Pettai and Pettai (2015, p. 6) wish to keep these two phenomena separated, since they see politics of memory as a "rather vague field of study", which includes a whole range of issues and actors that they do not consider. Thus, politics

of memory can include all kinds of commemorations, speeches, civil society mobilizations about the past, while Pettai and Pettai (2015) confine their interest to state authority over the issues of the past and how political and social actors influence it. In this work, the focus is likewise restricted to the ways the state deals with issues of transitional justice. But, what Pettai and Pettai (2015, p. 4) call "setting prevailing truth discourses" is one element that is not analyzed in depth here, except for the ways some "symbolic" measures of transitional justice contribute to truth discourses. Even though "the politics of truth and justice" is in some ways a better term, the term transitional justice will still be used here, because of both the slight difference in research focus and the fact that it is used more widely and more established in the literature. But that still means one part of the temporal dichotomy and the whole object of study are referred to by the same name. To avoid this confusion, retrospective justice can simply be thought of as a subtype of transitional justice in a wider sense.

Furthermore, another reason this dimension is somewhat particular is that a lot of the time it is not very relevant. Pettai and Pettai (2015, p. 23) point this out as well. They state that with, for example, short lived junta regimes like the one in Greece 1967-1974, this distinction has no bearing for transitional justice. For most wars or conflicts, the same will be true, unless the conflict in question is a truly extraordinarily long-lasting one. It will mostly be found in post-communist contexts because of the longer duration those regimes had.

Obviously the retrospective vs. transitional distinction is very applicable for the post-Soviet context that Pettai and Pettai (2015) are writing about. And history has for that context served up an event that is easily used as a point of differentiation between the two types of justice. This is of course the death of longtime leader of the Soviet Union, Joseph Stalin. After his death in 1953, repression in the USSR gradually eased up and changed its character. To be sure, the repressive apparatus remained in place and the totalitarian nature of the regime did not shift. There were still individual instances of appalling human rights abuses. But it was not as widespread and routine as before. After 1953, there were periods of liberalization and increasing moderation but also periods of the reverse trend and this complicated history does not have to be covered here. Still, there were so many instances

requiring justice before 1953 that were so egregious that it plainly makes sense to use the year for separation. Pettai and Pettai (2015, pp. 34-35) state that where retrospective justice does emerge in the post-communist context, it is ironically more likely to take on a very broad and extensive form, since repression was so severe during the Stalinist period. In other contexts, perhaps there is no one, seminal, event which will afford such a clean differentiation. To be sure, the distinction between retrospective and transitional justice can be applied to other contexts than the post-Soviet one, with proper adjustment. As will be shown later on, the history of Yugoslavia provides a fairly clear differentiation as well.

Similar to transitional justice aimed at victims, retrospective justice in some ways requires less political capital to undertake (Pettai and Pettai, 2015, p. 24). Placing it on Grodsky's (2009) spectrum, retrospective justice would be lower than transitional. But because of all the time that has passed since those crimes were committed, retrospective criminal justice is weighed down by both statutes of limitation and the prohibition of retroactive punishment. Prosecutors often go around this issue by applying far-reaching criminal categories to these crimes, such as genocide or war crimes (Pettai and Pettai, 2015, p. 34). Another issue is that a lot of the perpetrators will be deceased, very old, or retired, which could prove contentious to the public.

The second temporal dimension that Pettai and Pettai (2015, pp. 25-30) take into account is how much time passes after the transition before transitional justice measures are put in place. Since transitional justice has been defined in opposition to retrospective as that which also secures the democratic transition, measures which are taken long after the transition wouldn't fit into the same category. The speed with which these measures are employed is definitely an important factor in transitional justice. Some authors have taken further and incorporated this dimension into their analysis. Elster (2004, pp. 75-76) mentions three variants of this delayed transitional justice, "protracted", "second-wave", and "postponed". The first refers to a situation where the transitional justice process starts immediately but then proceeds to go on for a long time, the second to a situation where the process also starts up immediately but then ends fast and starts up again after some time, and finally, postponed justice, which starts only after some time has already passed since

the transition. Collins (2010, cited in Pettai and Pettai, 2015, pp. 40-41) and Raimundo (2012, cited in Pettai and Pettai, 2015, pp. 40-41) have both independent of each other described what they call "post-transitional justice". They have different conceptualizations, but they both broadly refer to justice measures that come after the start of democratization has already taken place. Pettai and Pettai (2015, pp. 42-43) argue that what is usually presented as a dual distinction, the beginning of the democratization and then the democratic consolidation, actually merits a tripartite division. For them, there is a point when the initial start of the transition to democracy has already passed, but when consolidation has not yet happened. They believe it is necessary to divide the democratization this way, in order to best see how transitional justice efforts occur in relation to the development of democracy in a country.

There are some problems with including this dimension into this analysis of transitional justice. First of all, the same problem as with retrospective justice comes up, the question of where to place the dividing line between transitional and post-transitional justice. Pettai and Pettai (2015, p. 42) take as a starting point the establishment of basic tenets of democracy, echoing Collins' (2010, cited in Pettai and Pettai, 2015, pp. 40-41) understanding. Obviously, this can be open to interpretation as democracy can often gradually assert itself without an obvious date or event that signals it has come into being. Still, there are relatively easy and objective ways to determine whether the "basic tenets" of democracy are fulfilled. Data from a number of well-known indices which deal with freedom or democracy can be used for this. Freedom House in their famous "Freedom in the World" report have a category that states can fall in and out of called "electoral democracy", which could be used as a benchmark. Countries that are considered electoral democracies fulfill certain basic criteria of political and civil rights, but they are not considered "liberal democracies", which requires a much more robust observance of freedoms and civil liberties (Freedom House, 2020). Alternatively, the Polity data series tracks regime types and their changes in a variety of countries around the world. They have three main designations of regime type, democracy, anocracy and autocracy. Democracy and autocracy are at the opposite sides of the spectrum, while anocracy is in the middle. Anocracies are a mixed type between democracy and autocracy, which exhibit

characteristics of both. Polity's scores range from -10 to 10, and the minimum for a democracy is a 6 (The Center for Systemic Peace, 2014). This could serve as another good benchmark for the establishment of basic democracy.

With instances of conflict, the situation is somewhat different. The establishment of democracy after war does not perfectly correspond to the establishment of democracy after an oppressive regime. Not all conflicts entail an absence of democracy anyway. Sometimes the end of a conflict will also bring with it the establishment or re-establishment of democracy, but surely, there can be periods of conflict without democracy ever disappearing. It can get more complicated with civil wars. Still, the distinction can be applied to instances of post-conflict transitional justice as well, if sometimes with adjusted temporal boundaries. Sometimes, the course of the conflict could have to be taken into consideration to determine when post-transitional justice occurs, along with periods of truce, armistice agreements or the final conclusion of the conflict and establishment of peace. A lot of this depends on the case, and in some ways, this is still open to further research.

One more issue that could be raised is that placing everything that happens after an initial establishment of democracy into the post-transitional category is that this would in a way overlook a lot of what transitional justice is. In doing this, a lot of what takes place in terms of transitional justice would be put into in a separate, subordinate, category. And a retrospective category has already been established which also takes up a lot of what could be counted as transitional justice. Maybe this view is a bit too narrow. Again, if transitional justice is imagined in a wider sense as a superordinate category this line of reasoning can be avoided.

It must be noted that post-transitional justice relates to a wholly different temporal dimension from retrospective justice. Post-transitional justice refers to the temporality of the actual measures, while retrospective to the temporality of the crimes. In other words, retrospective justice occurs when crimes committed decades before the transition are confronted, and post-transitional when crimes are confronted long after the transition, irrespective of when they occurred. Therefore, post-transitional justice can also be retrospective.

The concept of post-transitional justice is a useful addition to the overall picture. It is not included in the analytical model as it is slightly different than the other considerations that make it up. Pettai and Pettai (2015) examine this temporality in another way, where they look at the transitional justice pattern in three specific different years. In this work, post-transitional justice will not be examined by itself, but it will inform how measures are judged based on when they are put in place. If a measure that was absent during and slightly after the transition is suddenly put in place long after the basic tenets of democracy have been established, it should be of interest to the researcher.

The last part of the integrated analytical model that has to be discussed are the so-called substantive levels of truth and justice, where the most important differentiation between the measures happens. The model neatly separates the various transitional justice measures into three categories: criminal-judicial, political-administrative and symbolic-representational. The categories are somewhat self-explanatory, but it should be explained what characterizes these types of transitional justice, and some subtler features of the distinction should be brought out.

While this is certainly not the only feature, it can be observed that the three categories latently differ in the "severity" of measures found in them, they are progressively less severe going from top to bottom. They differ similarly in terms of the level of legal formalization. Criminal trials are very severe punishment and legally formalized while voluntary self-reporting is generally not. This is akin to how Elster (2004, pp. 83-93) distinguishes between legal, administrative and political justice. Similar to how Brian Grodsky (2009) organizes his transitional justice spectrum, Elster imagines the three categories as a continuum, with "pure" legal justice on one end, and "pure" political justice on the other. Pure political justice happens when an executive unilaterally decides what to do with wrongdoers and who they are exactly, without the possibility of a legal process. Pure legal justice is characterized by unambiguous laws, an insulated and unbiased judiciary and an adherence to principles of due process. Administrative justice can be closer to either, depending on whether the administrative decisions can be appealed in a judicial way or not. Unlike Elster (2004), Grodsky (2009) explicitly ranks policies on a scale in

terms of their severity. Pettai and Pettai (2015) also stop short of this, as it would mean determining the exact distance between measures in terms of the feature by which they are ranked.

What also separates the measures found in each of the categories is how they represent different actions or processes adopted by the state as the primary actor in transitional justice. Bringing charges against past perpetrators or organizing purges of the civil service entails completely different policy processes. And as has been covered earlier, different approaches incur different political costs and require different amounts of political capital. All in all, measures found across the matrix are diverse and different in character, by bringing out the ways they are connected and the ways they differ, a much more informed comparison between cases can be made. The matrix helps show how all the policies instituted in a country combine to create a certain pattern of transitional justice, and is therefore the best analytical tool that can be used to judge the overall transitional justice process in a case.

3. Multiple transitions

3.1. Definition and Existing Scholarship on Multiple Transitions

As has already been previously stated, there are several different contexts where transitional justice is applied and studied. Furthermore, these contexts both require and usually engender different responses in terms of frequently employed transitional justice measures. The three main generalizable contexts that have an established body of literature devoted to them are post-communist, post-authoritarian and post-conflict transitional justice. There have been works which examine cases from different context together, especially post-communist and post-authoritarian cases (different chapters in De Brito, Aguilar and González-Enríquez, 2001, many different historical contexts are brought out by Elster, 2004), but the scholarship has developed relatively independently. Unfortunately, since these contexts are so distinct from each other, there hasn't been much work problematizing the relationships between the contexts, especially the situation when more of them are present or when the boundaries between them are somewhat blurred. And yet, it is not the ambition of this thesis to thoroughly examine the theoretical ties and distinctions between transitional justice contexts, which would be a separate research topic in itself.

That being said, the goal is to construct a paradigm which examines cases where these contexts become mixed together. Therefore, transitional justice in multiple transitions is understood as the process of transitional justice in countries which have had to deal with more than one transition, and where different transitional justice contexts coexist at the same time. If the possible boundaries of the concept are considered, it leads to what could be the "minimum" conceivable example, a country with two instances of non-democratic regimes that transitions to democracy. Those two transitions should be of different types. Since post-conflict justice is here presented as an equal embodiment of transitional justice, a country with an authoritarian regime and a civil war before eventual democracy, for instance, could also qualify. The upper conceptual limit for this concept does not really come into consideration, as there are virtually unlimited options that could exist. Still, there probably won't be many examples with more than three different transitions.

There are also plenty of different combinations of regimes and transitions that could happen in multiple transitional justice, post-authoritarian, post conflict, post-communist

and other subtypes of transitions that don't fit perfectly into those three categories. A country with any combination of them would also qualify. This is how the concept is understood here. It could still be informed by further comparative study, ideally also in non-European contexts. More empirical examples could broaden the concept and be used to figure out how it could be most informative and most generalizable.

There are works in the field which can inform the development of transitional justice in multiple transitions. A lot of studies of transitional justice can be found that thoroughly examine a single type of transitional justice in depth. They usually devote a chapter or several chapters to the theoretical and methodological background of that type of transitional justice and then study different cases where that type of transitional justice occurred and was adequately processed. For example, "Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience" (2015), edited by Lavinia Stan and Nadya Nedelsky studies post-communist transitional justice through a variety of themes and areas of research, covering cases as different as Poland, Romania, Serbia, Croatia, Bosnia and Herzegovina, The Czech Republic etc. And while some of these works cover the cases that are of interest for the study of multiple transitions, they usually don't study them as such, but mostly through the prism of one type of transitional justice. Indeed, there hasn't been much work that takes on the theme of multiple transitions in a theoretically meaningful way.

Jelena Subotić, whose chapter "The Mythologizing of Communist Violence" (2015a) can be found in the above-named book on post-communist transitional justice, is one author who does study multiple transitions. She comparatively studies Serbia and Croatia, two countries with multiple instances of transitions and transitional justice. But she does not really conceptually frame the question of multiple transitions in a way that could be generalized, rather, she uses its existence in Serbia and Croatia as a sort of *ad hoc* explanation for the low overall level of transitional justice, especially post-communist transitional justice. She later goes deeper into the actual workings of this, into how these different histories happen to hamper transitional justice processes. She believes that it is due to the conflict between defenders of two opposite parts of the past, which she believes

to be a nationalist one and a communist one. This is somewhat obscured by her initial explanation: “The transition from communism was a transition to nationalism and then to war.” It would suggest that the unique character of the transition is to blame for an absence of transitional justice that would be surprising in other cases. She echoes this assessment in another article “Out of Eastern Europe: The Challenge of Multiple Transitions” (2015b): “The transition from communism was a transition to nationalist politics and to war. This was not a transition to democracy but to destructive ethnic politics.”

In many ways, this is a very fair assessment. But perhaps the issue is deeper than whether or not the transition was characterized by some kind of nationalism. An objection could be raised with her formulations “transition to nationalism” and “nationalist politics”. The way she phrases it, it would suggest that nationalism or nationalist politics are incompatible with a transition to democracy, which seems like a peculiar argument. The two transitions in question were characterized by a shift to a different kind of authoritarian government than the one preceding it, and those authoritarian governments were nationalist in nature, to be sure. But a lot of time has passed since then and how can the transitional justice process best be explained now, after conflicts and nationalist fervor have simmered down? Serbia and Croatia can no longer be so easily dismissed on their democratic credentials, notwithstanding some recent authoritarian backsliding in Serbia (Freedom House, 2019b). There has since been a shift in these countries and a new explanation is required as to how the various transitions have influenced the process of transitional justice.

Subotić (2015a) also suggests that when post-communist transitional justice is undertaken, it is done by nationalists who seek to utilize communist crimes and oppression for their purposes. It is done to solidify the narrative of national victimization, to build a new nation on the express rejection of the communist past, and to justify war. This argument ventures into a territory that has not yet been fully covered, that of “motivations” for transitional justice. As has been previously stated, some authors (De Greiff, 2012, De Brito, Aguilar, González-Enríquez, 2001) believe transitional justice is positive because of its impact on democracy, or even development in general. In some ways, if transitional justice in the way it has here been defined is taken to be a net positive for society, the precise motivations for it are not really of interest. Furthermore, motivations are very hard

to judge, and not something that should be undertaken lightly. Perhaps transitional justice can have some positive consequences even if undertaken for the "wrong" reasons. In Subotić's (2015b) view, this does not hold true. She believes that not all transitional justice projects serve the same normative goals, and that "Sometimes, no transitional justice is the best transitional justice".

Perhaps the process could be somehow hijacked and made to serve a purpose that was not beneficial to the society as a whole, but rather promotes the interests of one part of society. Transitional justice policies can often be divisive, so in some ways, a process that is hijacked by one group could produce discord in society. Subotić (2015b) would probably tend to agree with that as she titles her book-length study about transitional justice in ex-Yugoslavia "Hijacked Justice". She believes that post-conflict justice was hijacked because it was made to serve particular political interests. An issue that could be raised is that transitional justice is very often in the service of political interests and not necessarily promoted simply because of a "noble" desire for justice. Sometimes it can be hard to know where the push comes from. If it proceeds according to the law (provided the law was not *ad hoc* adjusted for the purposes of using transitional justice to harm opponents) and punishes perpetrators of past crimes and rewards victims of injustice, it would not seem to be detrimental to society. Likewise, the simple fact that transitional justice is in the service of nationalism does not disqualify it automatically. Transitional justice can often be tied in some way to nationalism when it involves an element of foreign domination and this has been the case in many countries, especially in the post-communist context.

Subotić (2015b) seems to offer another explanation for the unusual character of transitional justice in ex-Yugoslavian countries. The overlapping quality of the transitions in the Yugoslavian case meant that transitional justice efforts dealing with the more recent regime overshadowed the efforts to deal with the older one, according to her. This is definitely a sound argument. But again, it is not completely developed as a hypothesis. Would this happen in other contexts where multiple transitions overlap? It is worth thinking about and further developing this hypothesis, while looking at other cases where it could have occurred.

Monica Ciobanu (2015) also writes about the issue of multiple transitions, but under a different name. Her chapter "The Challenge of Competing Pasts" discusses the case of Romania, another country which has had multiple repressive pasts. Romania is an interesting case because of its peculiar post-communist transition. Like ex-Yugoslavia, Romania experienced a violent transition to democracy in 1989. But unlike in ex-Yugoslavia, it was not a case of full-fledged war, but a revolution that saw armed conflicts between protestors and the police and military that left over 1100 dead. To be precise, some would doubt that what happened in Romania was really a revolution, but either a coup or a "stolen revolution" (Kotkin, 2009, p. 6).

Ciobanu (2015) adds an interesting issue to the debate which has so far been overlooked in this part of the discussion. That is, the issue of World War II fascist crimes in the context of multiple transitions. She states that in 1989, new political actors found themselves in a situation where they had to address three different histories, the Holocaust crimes of fascist leader Ion Antonescu, the Gulag-style repression after the establishment of communism, and the violent events in 1989. She later adds another possible past, the communist repression under Nicolae Ceauşescu from 1965 until 1989.

She does not initially consider the repression under Ceauşescu as a distinct period of oppression, even though it would in some ways fit better than some of the other periods into a framework of multiple transitions. The character and scope of wrongdoings changed once Ceauşescu came into power, especially the methods and scope of the Securitate secret police (Ciobanu, 2015) which lasted all the way until 1989. In the conceptual framework from Pettai and Pettai (2015), this could fit very well to the distinction between retrospective and transitional justice.

But the crimes related to the Holocaust are another issue. They could also be added to a multiple transitional justice framework, and there are many cases where World War II crimes occurred along with other crimes and transitions coming after them. Yet, since in most of these cases of multiple transitions, the fascist crimes happened many decades before the transition to democracy, they present a somewhat distinct challenge, in many ways similar to retrospective justice. Also, the fascist crimes and regimes were usually much shorter in duration relative to the communist regimes. The justice aimed at fascist

crimes will then end up being largely symbolic a lot of the time. Also, those crimes were often brought up and challenged during the succeeding non-democratic regimes. In some ways, they were "dealt with", but of course not in a democratic way.

In the context of Yugoslavia, Croatia and especially Croatian nationalism were seen as "tainted" by the events during the Second World War, when a Nazi puppet state was established there (Subotić, 2015a). The Independent State of Croatia, which lasted from 1941-1945, was formally governed by Croatian fascists, but de-facto controlled by Nazi Germany. Many of these fascists, who were called *Ustaše*, after the revolutionary terrorist organization of the same name, were captured and summarily executed by the Communists. Some high-ranked officials managed to escape but some of them were later assassinated by hitmen tied to the communist secret police. One of them, former minister in the Independent State of Croatia Andrija Artuković, even made it to trial, as he managed to avoid being extradited to Yugoslavia up until 1986, when he was finally sentenced to death. Of course, we can hardly think of these actions as constituting transitional justice in the proper sense of the term. Even the instance of a trial cannot be fully considered, as the judicial system could hardly meet any benchmarks of justice, or due process as Elster (2004, p. 88) conceptualizes it.

Subotić (2015a, 2015b) opens up some very interesting questions about multiple transitions, but more research is definitely needed to answer them. Ciobanu (2015) adds some astute observations about multiple transitions in Romania. She also gives four factors, which in her opinion should be looked at in other cases of multiple transitions. They are: the exit mode from the repressive regime, the degree of continuity of political elites, the creation of a nationalist rhetoric and the timing of external factors. These are some of the authors in the field to broach this topic, and their views on it. Visibly, there aren't many works on the topic, and it is the ambition of this thesis to add to them and perhaps fill in some of the gaps in the scholarship.

That all being said, the question of whether or not "multiple transitional justice" deserves to be separately conceptually framed must be considered. It will be argued here that it does, for a number of reasons. Firstly, it is very probable that when there are multiple pasts to contend with, the transitional justice process will be impacted, in one way or

another. Subotić (2015a, 2015b) makes this case as well, but provides explanations that are not completely satisfactory. Also, there seem to be a meaningful number of countries which have had to wrestle with just that, but so far, they haven't been brought together for study as much as they perhaps should have been. It is eminently believable that transitional justice in these cases would share enough features to warrant a framework that is geared toward studying cases with multiple transitions. This framework could then be applied to many different cases to test its validity. If transitional justice processes in multiple cases are better explained by this framework than with traditional transitional justice methodology, it should justify its existence.

3.2. Hypothetical Effects of Multiple Transitions on the Transitional Justice Process

There are a number of ways multiple transitions could influence transitional justice. It could be that countries which have to deal with multiple pasts often fail to adequately deal with any of them due to a certain "paralysis". This could happen when there are competing interests in researching and publicizing wrongdoings from certain periods in the past. Kubik and Bernhard (2014) have constructed a theoretical framework which, while it admittedly concerns memory politics rather than transitional justice, is useful for the purpose of this discussion.

While researching the memory politics of post-communist European states, they come across certain constellations of forces regarding discussions and commemorations of the past. Their framework is constructed to explain how these various situations come about in those countries' public spheres. They talk about mnemonic actors, "political forces interested in a specific interpretation of the past", and they list four types of mnemonic actors: warriors, pluralists, abnegators and prospectives. Different combinations of these actors and their interactions lead to one of three memory regimes, "dominant patterns of memory politics in a given society in a given moment in reference to a past event or process". They are called fractured, pillarized and unified.

All of these memory regimes will not be covered here in depth, as the various combinations of mnemonic actors and their interactions in a society lead to many different outcomes, not all of which are important for this discussion. But one part of this framework

that should be emphasized is the concept of mnemonic warriors. They are political and social actors who are convinced that they alone hold the true and factual interpretation of history and that all other interpretations are false or intentionally misleading. They do not accept any other version of history other than their own. This concept is useful to borrow because a similar development could be postulated with regards to transitional justice in multiple transitions. Mnemonic warriors, activists that are interested in revealing the misconduct of one regime in the past, while actively trying to conceal the misconduct of another, influence the state, which then affects the transitional justice process. This head-to-head contest between mnemonic warriors could then lead to the aforementioned "paralysis" which hinders transitional justice. Both sides are out to prove the wrongdoings of the other, while any admission of guilt from their side is seen as unfeasible because it would be a boon to the opposing side's argument.

There are different ways the regime could react in this situation. Some governments might refrain from provoking any of the groups engaged in this memory conflict, and not introduce any transitional justice measures. This could have the opposite effect of worsening the conflict, if the opposing sides feel the regime they advocate against has transgressed more. They might then call for more transitional justice to deal with the part of the past they disagree with. States and their transitional justice can be affected by this. A version of this kind of conflict can arguably be observed in contemporary Croatia, where there are opposing activists out to shed light and legislate against crimes in the past. Political orientation is a major factor that determines which part of the past these activists, or mnemonic warriors, will defend or relativize and which part they will admonish. This is what Subotić (2015b) calls a "politicization of history", and warns that it is dangerous when used for political purposes. In her view (Subotić, 2015a), both Serbia and Croatia experienced a transition from communism which placed in power anti-communist nationalists. They were interested in exposing the crimes of the communist regime, while their opponents, anti-nationalist liberals, sought to expose the crimes of the nationalists and not of the former communist regime. There were a number of reasons for this, with their political backgrounds figuring as well. Still, many former communists became nationalists, which means they had somewhat contradictory goals.

Alternatively, a situation could be imagined where the existence of multiple transitions has no discernible effect on transitional justice. Even though all of these scenarios are purely hypothetical, this one would be the hardest to actually prove since it is a counterfactual. Perhaps a counterfactual line of reasoning, something that is usually not very good methodological practice, is acceptable in this case. It should be mentioned here what John Odell (2001) states in his article on case studies and their various types, where he defends counterfactual arguments. Even though they are by definition speculation, they are common throughout scholarship and political debate, he believes. They can add discipline to an intuition and can be persuasive.

In any case, if the pattern of transitional justice without the multiple transitions is unknown, how can it be judged that they did not have an effect? It is not enough to note that if the transitional justice process seems to be "unremarkable" and according to expectations from other contexts, that the multiple transitions had no effect on the overall picture. Perhaps it would have looked wholly different. Transitional justice is a very complicated process, one which involves many variables and it is hard to construct a precise model for its outcomes in a manner that rational-choice theory would. The easy answer to this question is a comparison with other similar cases that differ in that they did not have to deal with multiple pasts. This could also be fraught with difficulties, but could imaginably lead to a "clean" comparison of cases, with other variables being held more or less constant. If it could then be observed that the effects of multiple transitions were negligible, it would be a compelling argument. But it is exceedingly unlikely.

A somewhat more realistic scenario of the effects of multiple transitions could be similar to what is in the study of memory politics called "layering", another term borrowed from Kubik and Bernhard (2014). They describe a situation where different parts of the past are commemorated together, even though they aren't strictly connected. Examples include Hungary, where many commemorations are "layered" with the memory of the failed revolution in 1956, or the Baltic states where many commemorations of the Baltic Way in 1989 were mixed together with the memory of the Molotov-Ribbentrop Pact in 1940 which

led to the loss of their independence. In transitional justice, disparate histories of oppression can be, so to say, "lumped together" into one big past which needs reckoning with. Not much consideration is then placed on the minutiae of the different regimes, the various degrees that they went to in their misdeeds, or the different types of crimes they committed. Instead, all wrongdoings are to be dealt with similarly, no matter the regime. This kind of lackadaisical approach to the practice of transitional justice could have some negative consequences. It could be harsher when it is not warranted and more lenient where it should be the opposite, which would make it to a degree unjust. The depth with which various pasts are looked into would be sacrificed for an attempt at a misguided "balance" that treats all oppression the same way, even though it is different. A further problem could arise if this provoked an activism from those unsatisfied by that even spreading out of the blame. In other words, if a society in this situation had a public sphere that was populated by "mnemonic warriors" of different stripes it could lead to conflicts between them. A regime which tries to provide an answer to the challenge of dealing with multiple pasts would be beset by opposing demands for harsher transitional justice, which is a repetition of the first scenario that was outlined.

An instance of attempted "layering" can be observed as part of international transitional justice efforts. This dimension of transitional justice hasn't really been touched upon yet, but it has become an important factor in the overall picture in many countries. International human rights norms, ad-hoc created criminal tribunals, the International Criminal Court and transnational cooperation of activists have all contributed to shaping transitional justice processes around the world (Roht-Arriaza, 2001).

This instance of "transitional justice layering" regards the push in Europe to put communist crimes on an equal footing with Nazi or fascist ones. This push has been led in the EU by the Baltic States, but also countries like Slovenia. The movement has run up against opposition from countries and groups that feel this move would actually be detrimental to justice. Many feel that crimes committed in the name of communism, as horrific as they might be, are plainly different to fascist crimes such as the Holocaust. But those who wish to publicize more widely the crimes committed by various communist regimes wish to use the Holocaust as a point of comparison because of how widely it is

known and the fact that it has become the standard by which other human rights abuses are judged (Pettai and Pettai, 2015, pp. 297-306).

Another instance that even more clearly demonstrates this effect of layering is the recently adopted Ukranian “Law on the Cleansing of the Authorities”, which is basically a lustration law. It mandates the firing of government officials and an employment restriction for five or ten years. It expectedly includes measures aimed at post-communist officials, but lumped together with officials from the authoritarian Yanukovych regime which ended in 2014 (Roudik, 2014). It is quite curious to have a lustration law that targets officials from regimes more than 20 years apart, and it can ostensibly be best explained using the concept of layering.

The last hypothetical scenario that will be considered here is a situation where there are multiple instances of repressive regimes in the past but not all of them are confronted, or at least not with the same standards. Some parts of the past are dealt with in some way, leaving the other parts out of transitional justice efforts. This could come in many forms, depending on the number and type of transitions present in the case. For example, a country with three transitions could process one or two of them, leaving the other part or parts of the past without adequate transitional justice.

In other words, the fact that that there were multiple transitions leads to a lack of transitional justice for some parts of the past. If the more proximate causes of this situation are further pondered, a few come to mind. For instance, the simplest would be that one regime was so much worse than the others in terms of the crimes committed in its name that it simply overshadows all of transitional justice, leaving little effort left over for the other, less egregious ones. This may be counterintuitive, as it seems more likely that countries which are successful at dealing with one aspect of their past, will be similarly successful with other aspects of it. Still, it is not outside the realm of possibility, not all oppression is the same and some leaves a much greater mark on people.

A different way that one context can dominate the process and overshadow the others is when there is pressure from an outside source to tackle that part of the past. This can be observed in the ways some transitional justice is mandated by the international

community. Sometimes, aid, support, or the prospect of joining international organizations are used to entice states into undertaking transitional justice. Subotić (2015a, 2015b) states that the international and European community used financial aid and the possibility of obtaining admission to the European Union to pressure the Croatian regime and force it to reckon with its past. Of course, the only justice that was "forced" in this way was post-conflict justice. It seems unlikely that post-communist justice would be used in the same way. Still, it provides one possible scenario for transitional justice in multiple transitions.

Another explanation for the dealing with only one part of the past could be found in the relative continuity of the political class from only one repressive regime into democracy. A possible criticism of this situation is that if there is a significant continuity of the political class, can the resulting political system be called democracy? Perhaps it harms the "democratic credentials" of the system, but it can definitely still belong in the democratic camp, especially if we think of the "basic tenets of democracy" criterion that was outlined earlier. Democracy is after all, according to that conceptualization, a spectrum instead of a binary characteristic of political systems.

Furthermore, many post-communist countries have parties that are successors to communist regime parties, even the most successful ones such as Germany, whose *Die Linke* (formerly PDS before a merger) party is a direct descendant of the Marxist-Leninist ruling party of the German Democratic Republic. Druckman and Roberts (2007) look at communist successor parties in 15 east European countries and find that these parties have spent a considerable time in parliament and in government in those countries. Communist successor parties were 11% of the parties in parliament and 13% of the parties in governing coalitions in the dataset. But there was an indication of bias against communist successor parties in constructing coalitions. They are less likely to enter government, they tend to be part of oversized coalitions and tend to be allocated a smaller share of portfolios than would be their proportional share. All this doesn't suggest a startling continuity of the political system from communism into post-communism. There are outliers, such as Bulgaria, where 33% of the parties in government from 1990 to 2001 were communist successor parties.

And more importantly, this methodology does not take into account the former communist Party members who joined or founded other parties after political liberalization and the introduction of multi-party elections. To know or at least approximate the level of continuity in the political elite, this question should also be considered. Some evidence suggests this is widespread in the region, but especially so in Croatia, where many left the Communist Party to join the democratic forces (Pickering and Baskin, 2008).

Ciobanu (2015) also considers the degree of continuity in the political class as an important factor that influences the official response towards past crimes. Based on her case study, another empirical example that can be used here is Romania. This case could actually incorporate both possible explanations of confronting one part of the past. As has been previously stated, in 1989 Romania had a number of clashes between protestors and armed soldiers and police, with many deaths resulting from them. This was part of the Romanian transition to democracy, and the deaths in 1989 were committed by the same regime that had already been in place for decades, but the 1989 events turned out to be a "transition" for themselves. While not exactly separate from the regime and all its misdeeds in the previous years, in practice it became separated. That was arguably both because these crimes were "fresher" and more pressing in the collective imagination, but also because they were used to scapegoat select highly-ranked officials. The justice given out for 1989 became a sort of "blanket", used to distance many ex-Communists from the regime and allow them to re-enter political life (Ciobanu, 2015). Many of them went on to occupy positions in the successor regime, which could, together with the violent nature of the events in 1989 explain the relative lack of transitional justice for communist crimes before 1989.

4. Empirical Case Study

4.1. Research Design and Case Selection

The conceptual framework that was presented here is in part an original one, in that it attempts to study an as of yet undeveloped or underdeveloped concept, multiple transitional justice. But, it uses an existing method of study and adapts it to the study of multiple transitions. It is argued here that this type of transitional justice is worthy of study on its own, and that it has not been adequately studied so far. That is because the entire transitional justice process in these countries cannot be adequately understood if not viewed holistically, rather than through the prism of specific types of transitional justice, post-communist, post-authoritarian, etc. If that holds true, then this new conceptual framework should be justified. To better test the framework, it is applied to an empirical case that should be a good fit for it.

In the empirical part, the transitional justice process is studied using a framework developed by Pettai and Pettai (2015) for the study of post-communist transitional justice. Pettai and Pettai's analytical matrix (2015, p. 32) is generalizable and easily applied to contexts other than the one they researched in their book, which is why it will be the primary tool for an analysis of the combined patterns of transitional justice in Croatia.

What will be discussed in the empirical portion of this thesis is a case of "triple transitional justice". This kind of empirical example was selected because it is both specific enough to underline the multiplicity of transitions and generalizable enough to potentially apply it to more cases. Triple transitional justice reinforces the notion of multiple transitions arguably considerably more than a case with two transitions, and when considering cases with even more transitions, things get a bit more opaque, with empirical examples being harder to come by.

Both "multiple transitional justice" and "triple transitional justice" could perhaps be used as paradigms, depending on whether the focus is to keep things more generalizable or more precise and "thicker". Both paradigms can be applied with different degrees of success to a number of cases, or even regions, in Europe most visibly. Undoubtedly, this is in great part due to the shared history of Europe or those regions, which experienced certain types of authoritarianism and repression at more or less the same time. Naturally, there are

examples outside Europe as well, with plenty of countries that had either conflicts or authoritarianism in their pasts before finally transitioning to democracy. And more examples will perhaps come about in the future, as countries either transition to democracy in greater numbers, or even experience bouts of non-democratic rule.

When it comes to triple transitional justice, which can be observed in the case of Croatia, and which will be studied in the empirical section, it could very easily be applied to and studied comparatively in at least two other countries, Serbia and Ukraine. Serbia has had the almost exact same experience as Croatia, naturally owing to the fact that the two countries used to be part of communist Yugoslavia and were embroiled in a war. There are also differences, such as the fact that Serbia was largely free of war on its own territory, the different transition from authoritarianism in the early 2000s and the recent issues with democratic norms (Freedom House, 2019b). Ukraine has also had a post-communist transition in the early 1990s, bouts with authoritarianism that lasted as late as 2014, and a civil conflict that is still not resolved, but has seen at least some early efforts towards reconciliation. Other examples that could conceivably roughly fit into the paradigm are North Macedonia, Kosovo, Armenia, Georgia, or perhaps Romania, as was already shown. From the difference between Serbia and Croatia on the one side and Ukraine on the other, another subtle difference can be observed. Triple transitional justice can be simultaneous, or in other words overlapping as Subotić (2015b) phrases it, which means that countries experience the non-democratic regimes or conflict concurrently, like in Serbia and Croatia. Or the various transitions can come successively, with periods of time in between them, like in Ukraine. This distinction could prove to be quite illuminative with more comparative work.

It must now be explained why Croatia, specifically, was chosen as a case study. Firstly, because it is a case of triple transitional justice, and also a case with simultaneous transitions. But also because it most plainly exhibits post-conflict justice, and has most clearly “transitioned”, out of the listed examples. As was mentioned earlier, triple transitional justice arguably provides a better insight into multiple transitions than a case with two, and has a good deal of empirical examples. Out of the three best examples that were identified, Ukraine, Serbia and Croatia, the first arguably represents a case of

"successive" transitions, which should perhaps exhibit less mixing and interrelationship between the contexts. To be fair, this is an assumption, and might not turn out to be true with further study.

Furthermore, the conflict in Ukraine is in many ways still active, or perhaps frozen. Serbia has also been embroiled in the conflict in Kosovo where it has a sizeable ethnic minority, another case of a frozen conflict. Serbia has had a part in many such conflicts as part of the Yugoslav Wars, of which Kosovo is the final instance. At the same time, Serbia has largely been free of war on its own territory. And finally, Croatia has made the most progress out of the three countries in terms of democratization. Judged by Polity, for example, Croatia and Serbia made a similar jump around the year 2000, but Serbia briefly went backwards, and now scores just slightly lower. Ukraine has gone backwards and forwards, unsurprising due to the nature of its transitions, but has usually scored quite low (The Center for Systemic Peace, 2014). According to Freedom House, Ukraine and Serbia are "partly free", while Croatia is "free", and Ukraine scores the lowest of the three (Freedom House, 2019a, 2019b, 2019c). It seems likely that these facts would also contribute to Croatia making more progress in terms of transitional justice.

The process in Croatia will be analyzed by laying out events, issues, policies, laws, etc. that are relevant to transitional justice in a given context. This synthesis will be done using simply the analytical method of collecting data from news sources, academic sources, proclamations of laws, etc. and then breaking down this data using the analytical matrix. Afterwards, the contexts are compared to each other. No further methods are really required, as the case study is used simply to see how empirical events fit in the conceptual framework.

While the conceptual part of this thesis was mostly a new concept study concerned with establishing a new conceptual framework, the empirical case study mostly falls into what Odell (2001) calls a disciplined interpretive case study. These studies, he says, apply a known theory to a new terrain, where they can usefully complement formal research and suggest improvements to a theory.

4.2. Historical Introduction

Before proceeding to the breakdown of transitional justice across the three contexts contained in the case study, all the contexts will be briefly introduced and presented. Keeping in mind that this is not a work of historiography or strictly historical in nature, it must be said that it depends on historical facts and trends. Therefore, some history should be covered, starting from the World War II period until today.

As was briefly mentioned earlier, during World War II, most of the territory of present-day Croatia was included in the Nazi Germany-allied Independent State of Croatia. It was a puppet state of Nazi Germany and Fascist Italy and could be characterized as fascist (Subotić, 2015a). It shared many characteristics of a fascist state, such as its very nationalist and militarized character, racial and ethnic discrimination, a dictatorial leader who styled himself *Poglavnik*, an untranslatable term similar to the German *Führer*, who governed it as a one-party state.

After the War, Croatia became part of the Federal People's Republic of Yugoslavia, which later changed its name to the Socialist Federal Republic of Yugoslavia. It was a one-party totalitarian state, but somewhat unique among the other states in the European communist camp. Especially from the moment it broke off from the Eastern Bloc in 1948, when Yugoslavia and its leadership were accused of exhibiting an anti-Soviet attitude and expelled from the Cominform, the supranational organization of communist states and parties. Yugoslavia's leader and dictator for life, Josip Broz Tito, acted on his own accord too much for the Soviets and they wished to remove him. After the Tito-Stalin split, many were purged in Yugoslavia as "Stalinists" (Previšić, 2013). Later, Yugoslavia practiced its own brand of socialism, the start of which was symbolically marked by this event.

What makes that significant for this study is the fact that Yugoslavia was also different to other communist states in the level of oppression its citizens were subject to. It could be described as lenient, when compared to other communist states (Subotić, 2015a, 2015b). Even though many in the post-Yugoslav space would probably contest this characterization, it is almost certainly true when taking in mind the later period in the 1960 through the 1980s. Some forms of repression were still in force, to be sure. Freedom of speech was still heavily curbed, the population was controlled by surveillance and the threat

of a powerful secret police, and the repressive nature of the regime was most forcefully recognized in the many killings of dissidents abroad that the secret police arranged. But inside the country, the repression gradually waned, especially after the death of Tito in 1980.

But during the socialist state's early history, this was markedly different. The period of Yugoslavian history when crimes were most prevalent and most egregious was unsurprisingly the immediate post-War period, a dark time of bloody retribution in many parts of Europe. During this period, there were many extrajudicial killings of suspected collaborators, political opponents and even "class" enemies. The event that stands out from this time is what occurred at Bleiburg, Austria in 1945. Many *Ustaše* and other collaborators or officials of the Independent State of Croatia tried to escape the Soviet and Yugoslav partisan forces to Austria, where they were met by Allied forces and made to surrender to the Partisans. There are many disputes about what occurred after and even about the identities of the victims. Those who wish to defend the retribution state argue that these were all soldiers who were in service of fascism and who had recently committed horrible crimes. Those who wish to rebuke the Communist regime would argue that many of them were innocent and some even children. Whoever they in fact were, many of them were killed extra judicially and buried in mass graves throughout Slovenia and Croatia after their surrender. Most sources place the number of victims at around 70 000 (Subotić, 2015a).

A second period of Yugoslav history which saw a surge of crimes against its people happened after the aforementioned Tito-Stalin split. It is usually referred to as the "*Informbiro* Period", which comes from the abbreviation of Information Bureau, the Yugoslav name for the Cominform. Some political opponents of the move were jailed or killed, such as the highly ranked Croatian communist Andrija Hebrang, but this was relatively rare. Most were purged, but many were also sent to a work camp on *Goli Otok*, an island in the Adriatic Sea whose name translates to "Barren Island". The camp was set up in 1949 because of the high number of arrested sympathizers of the Soviet Union, of which around 16 000 served there and around 400 died (Previšić, 2013). When Stalin died, Yugoslavia gradually restored relations with the Soviet Union, and in 1956, the persecution

of perceived Soviet sympathizers stopped, the camp was turned into a regular prison and outright oppression petered out. Therefore, it is suggested here that this year be provisionally taken as a dividing line between retrospective and transitional justice. Similarly as for Pettai and Pettai (2015) in the case of Baltic truth and justice, the division between retrospective and transitional justice stems from the death of Joseph Stalin in 1953, but in the case of Yugoslavia it does not rely on a specific event but a gradual relaxation which can be said to end around 1956. That is why the specific year itself is not crucially important, but what is important is the differentiation between post-War retribution and anti-Soviet purging on the one hand, and the more unexceptional repression (when compared to communist regimes of the 20th century) on the other. That, along with the fact that the first set of crimes happened around 40 years before eventual democratization, indicates a clear discrepancy between the two periods in terms of the expected transitional justice responses. This is, after all, very much in line with how Pettai and Pettai (2015) conceptualize the dichotomy of retrospective and transitional justice.

All of these facts together, but especially the lenient character of the oppression had a certain moderating effect on transitional justice and produced one of the arguably more unique patterns of post-communist transitional justice in Europe, which remains somewhat understudied because of its perceived lack of "fit" (Subotić, 2015b). The unique character of the regime had an effect on what could be called the province of memory politics. National memory, commemoration and the choice of who to honor with monuments and streets is sometimes peculiarly undetermined.

Until very recently, one of the more prominent squares in the capital city of Zagreb carried the name of Marshall Josip Broz Tito, the Yugoslav leader's official name and title. The name was changed after a lengthy campaign by a right-leaning group in the city council which conditioned their support for the mayor's coalition on the name being changed. This naturally opened up an impassioned public debate with both strong opposition as well as support for the move. Without any desire to widen the discussion into the territory of memory politics, this remark is meant to illustrate that if the former regime and certain events or people tied to it are as a matter of official politics at times

commemorated and at times strongly disparaged, it seems evident that there would exist a similar lack of consensus when it came to dealing with the regime's wrongdoings.

Moving on to the post-authoritarian context, this is where things get a little more complicated. The regime that governed Croatia during the decade or so from the moment that the country won its independence and until 2000 had many authoritarian traits and tendencies. Personalized rule with a great deal of power that was embodied in the figure of the president Franjo Tuđman. He would often rule by decree, to a degree that Marina Ottaway (2003) states he resorted to decrees even more frequently than the Communists had. This is a relatively unfair comparison, because of the different nature of decrees in the two regimes, but it is not without merit. He was a strongman who at times wouldn't even accept the outcome of an election when it didn't suit him and his ruling Croatian Democratic Union (HDZ) party. During his rule, especially in the earlier period, elections would be timed to suit HDZ and its candidates as much as possible. The elections would either be announced with very little time in advance, or for instance right after military campaigns or victories which would stoke patriotic feelings and favor the ruling party. Journalists had their phones tapped under orders from the government, and the freedom of the press was sometimes limited, to various degrees of success (Vurušić, 2012). There is even evidence of some extrajudicial killings, if not under direct orders from the regime, then under its implied patronage (Amnesty International, 2004).

And yet, the authoritarian tendencies of the HDZ regime under Franjo Tuđman were a far cry from some of the more hardline authoritarian regimes that come to mind when discussing this type of non-democratic regime. There was relative freedom, and most outright human rights abuses not tied to the war were uncommon. Further, he is not really perceived as an authoritarian in domestic discourse. He remains popular with many, as streets and public institutions throughout the country bear his name, and many statues of him adorn public spaces, around 20 in the country, with a prominent one erected as late as 2018 in Zagreb (Šukurica, 2018). He remains a popular, but also divisive figure today, according to opinion polls (Tportal, 2019a). There is no consensus on Tuđman's role in Croatian history, unlike the pretty strong consensus in the English-language scholarly

literature that mostly describes the regime as authoritarian in some way. Other terms used to characterize the regime are semi-authoritarianism (Ottaway, 2003), competitive authoritarianism (Levitsky and Way, 2002), illiberal (Vachudova, 2006, cited in Jović and Lamont, 2010), a defective democracy (Zakošek 2008, pp. 600–601, cited in Jović and Lamont, 2010), and a simulated democracy (Boduszynski 2010, pp. 74–114, cited in Jović and Lamont, 2010). But not all authors are in agreement, James Sadkovich (2010), for instance, calls for caution and investigates how the consensus around Tuđman as an authoritarian formed.

Obviously, the regime was not unconditionally authoritarian, as can be observed by the wide array of "lighter" descriptions used for it in the literature. While the nature of the regime can remain a somewhat open question, it is arguably not a reach to analyze post-authoritarian transitional justice in Croatia. The political elites who inherited power in 2000 instituted a wide range of constitutional changes, which they even called "de-Tuđmanization" (Jović and Lamont, 2010). If a process closely resembling post-authoritarian transitional justice can be observed in the case, it should add credence to the idea of the authoritarian character of the regime, but even without much in terms of transitional justice measures, the regime would not be "exculpated" of the charge of authoritarianism. The absence of measures in the boxes of the matrix of transitional justice bears some meaning, as well as a predominance of them. In any case, the relative lack of many widely known and identifiable wrongdoings perpetrated by the regime should also produce a limited pattern of transitional justice.

When discussing the Croatian War of Independence, there are many complicated issues and controversies that can emerge. While it didn't have many large-scale battles or "excessive" bloodshed and while ceasefires were kept during most of the War, it in some ways remains a complex issue, and one that is hard to extricate from issues and conflicts in the surrounding countries. Indeed, most of the time it is referred to the Yugoslav Wars, and not specifically to the war in Croatia. Domestically, the conflict is not often referred to together with conflicts in the neighboring countries, and it is called the "Homeland War", similar to the Russian term for World War II and the Napoleonic Wars. In any case, it can

be considered as part of the various wars and conflicts that happened after the breakup of Yugoslavia.

The War lasted from 1991 until 1995, with the most intense fighting happening in the beginning and the end of the War. Figures vary, but all in all, around 20 000 people lost their lives in the War (Zebić, 2018). Many were turned into refugees at some point, and the economic damage was also devastating to the nascent state. Unmistakable war crimes were committed in the name of both belligerents, and it should be briefly explained who actually made up the two sides.

One side was made up by both the Croatian government and various Croatian militias and paramilitaries, which mostly existed at the beginning of the conflict and were later dissolved and combined with the military. The other side was the Yugoslav People's army, but also ethnic Serbs living on the territory of Croatia organized into a breakaway state called the Republic of Serb Krajina. The Serb minority in Croatia was quite sizeable at the time, and not limited to the territory of the breakaway state, and many were thus subject to persecution and discrimination (Amnesty International, 2010). Since the War coincided with the first half of the Tuđman regime, sometimes crimes involving the persecution of Serbs are hard to separate or attribute to exactly one context or the other. After 1995, when the so-called Republic of Serb Krajina was overwhelmed militarily, the Serbian minority shrank to around half its pre-war size. Many had left before the start of the war, due to either outright persecution or the fear of it, but many more left Krajina before operation "Storm", which ended in the retaking of Serb-held territories. Some of them were also killed during the operation, and it is a topic that can raise controversies, especially in Serbia.

To approximately gauge the effect of the War and persecution on the Serbian population, census numbers can be used. By chance, there was a census taken just before the start of the War, in 1991, in which Serbs were 12.2% of the population. In the next census, taken some years after the War in 2001, they made up 4.5% of an already decreased total population. A related number is the amount of people who self-identified as "Yugoslavs", which would intuitively be made up of ethnic Serbs or others vulnerable to persecution. Of course, this cannot be proven, but other than a change in political leanings,

it is another indication of the change in the makeup of the population, as it might also include those of mixed heritage. In 1991 they numbered 2.2%, or 106 000. Ten years later, they were 176 in total.

These are just some of the many events and persons that made up the various experiences with non-democratic rule in Croatia. But now, the actual policies and measures of substance that make up the official response to those experiences have to be laid out. As was already mentioned several times, the Pettai and Pettai (2015) analytical matrix will be utilized for this purpose. One thing to add here is that before each context of transitional justice, the matrix will be replicated, but this time, it will not be filled with abstract measures but with precisely the policies that are being looked at in that case. Afterwards, each box of the matrix will be analyzed separately, and the policies that were passed which belong in the box will be laid out.

4.3. Post-communist Transitional Justice

Table 2. Matrix of post-communist measures

	Perpetrators		**Victims**	
	Retrospective	**Transitional**	**Retrospective**	**Transitional**
Criminal-judicial	Arrests and trials of perpetrators connected to abuses from the post-War or *Informbiro* periods	Arrests and trials of communist officials from the later period	Judicial rehabilitations of victims from the post-War or *Informbiro* periods	Judicial rehabilitations of later-period dissidents or victims of political trials
Political-administrative	Removing privileges or benefits for officials connected to abuses from the post-War or *Informbiro* periods	Purges, bans or vetting of communist officials, especially secret police or high-ranking officials	Compensation, property restitution or awarding of benefits to victims from the post-War or *Informbiro* periods	Compensation, property restitution or awarding of benefits to later-period dissidents or victims of political trials
Symbolic-representational	Official condemnations of post-War or *Informbiro* period crimes and their perpetrators	Voluntary self-reporting of officials, name disclosure from archives, official condemnations of the regime, non-judicial investigations of the regime	Memorialization of victims from the post-War or *Informbiro* periods, truth commissions involving hearings or statements from victims	Memorialization of victims from the later period, truth commissions involving hearings or statements from victims, access to personal files for victims

Starting with the top left corner box, which deals with criminal-judicial retrospective justice aimed at perpetrators, these are measures which have been mostly absent in Croatia before one prominent example. As has been stated earlier, judicial prosecution of these officials from decades ago is somewhat easier to undertake than prosecution of very recent officials. Even though evidence or witnesses can be harder to come by, and many perpetrators are already deceased, the crimes are usually more egregious and the perpetrators, if they are alive, have less political "protection".

Perhaps that can account for the fact that the first serious criminal prosecution of a high-ranking communist official was a case of retrospective justice. In fact, it was actually a case of post-transitional retrospective justice. In 2011, the then 91-year-old Josip Boljkovac was arrested and put on trial for crimes committed in 1945 while he was the

head of a local branch of OZNA. OZNA stands for Department for People's Protection, and it is a precursor to UDBA, the secret police. He was suspected of the murders of 21 civilians, 14 of who were unidentified, crimes for which the police investigation began in 1998.

Some facts about the political context surrounding this case are important. Boljkovac was arrested approximately one month prior to the parliamentary elections which saw the right-wing HDZ government lose power due to corruption scandals. The man responsible for the arrest was interior minister Tomislav Karamarko, who shortly after ran for the leadership of HDZ. He ran on an electoral promise of lustration and dealing with the past, both for the party leadership and later the parliamentary elections in 2015. His tenure as leader of the party was short-lived, as he was only deputy prime minister in a coalition government for less than one year. Unsurprisingly, he didn't manage to own up to his promises, which meant that his only attempt at transitional justice was the prosecution of Boljkovac. His drive for post-transitional lustration wasn't very popular, at least when judged by electoral results and his personal popularity in the public. In any case, the constitutional court deemed the detention of Boljkovac unconstitutional and he was released, finally being acquitted in 2014, shortly before his death. The court stated that these murders did happen, but that Boljkovac was not liable, and that there was no proof of his involvement.

Something that must be stated as well is that Josip Boljkovac was not just a long-retired nonagenarian communist official. He was also the first interior minister of Croatia, lasting in that post for one year before Tuđman relieved him. This is an apt illustration of the continuty of officials from one regime into the next that was hinted at earlier. Even though Boljkovac was acquitted of the crimes he was on trial for, he was still a ranking official of an agency notorious for its post-War crimes, and he was at the head of its local branch in an area where many crimes were committed.

Moving on to transitional criminal-judicial measures aimed at perpetrators, which have been almost completely absent, even undermined at times. Firstly, there was an instance of a trial in 1998 for the murder of a Croatian dissident in Paris, which occurred in

1978. The man put on trial was Vinko Sindičić, an (alleged) agent of UDBA, the Yugoslav secret police. The proceedings were started very early, already in 1990, mere months after the first multi-party elections and before independence. This was probably due to the fact that the murder victim, Bruno Bušić, was a very famous and respected Croatian *émigré*. Sindičić was named as a suspect in 1993, but wasn't put on trial until 1998 because he was already serving out a sentence for the attempted murder of another Croatian dissident in Scotland in 1988.This was in turn one of the few occasions when UDBA assassins were caught and imprisoned for their crimes. Sindičić was deemed not guilty for the murder of Bušić by the court in 2000.

Where this type of transitional justice could have been called undermined is in the few incidents involving the investigation and trial for the murder of Stjepan Đureković. This investigation was undertaken by Germany, and its efforts actually somewhat thwarted by Croatia. Many details surrounding this crime are puzzling, but what is established is the fact that Đureković used to be in charge of the state-owned petrol company INA, which made him rather highly-ranked in Yugoslavia. In 1982, he defected to West Germany and wrote several books with titles such as "How Croatia Is Being Robbed by Yugoslavia" and "Communism: The Great Deceit". In 1983, he was brutally murdered with a gun and a hatchet in the West German small town of Wolfratshausen (Tportal, 2014).

In 2009, Germany issued a warrant for the arrest of Josip Perković and three other men, suspecting them for the murder. Perković was the last chief of the Croatian branch of the secret police before the breakup of Yugoslavia, and was wanted because of the suspicion that the secret police ordered the execution. At the time, the right-wing HDZ government was in power, and they refused to extradite Perković. What must be now noted is that after independence, Perković went on to work at the interior and defense ministries of the new state, and later had a part in the establishment of the Croatian intelligence agency. His son was also an advisor to two successive presidents (Tportal, 2019b).

Later, when Croatia joined the European Union in 2013, a European arrest warrant was automatically in power, and Perković was to be extradited to Germany according to EU rules. At this point, the left-wing Social Democratic Party (SDP), the second of the two big parties, was in power, but they also decided not to extradite Perković. The president in

power also came from the ranks of SDP, and Perković's son was at the time employed by him. The government designed and passed an *ad-hoc* law popularly called *Lex Perković*, which effectively prevented the extradition of Perković. This had the makings of an international incident, and Croatia almost received sanctions because of it (Subotić, 2015a). Finally, Perković was extradited in 2014 along with another former intelligence officer, Zdravko Mustač. In 2016, they were both sentenced to life imprisonment in Germany, but subsequently given over to Croatia to serve out their sentences, which were commuted, there.

When it comes to criminal-judicial justice aimed at victims, an important point is that many victims from the *Informbiro* period were practically rehabilitated already during the later decades of Yugoslavia. Therefore, rehabilitations did not really happen after the transition. A rehabilitation that did occur was that of Andrija Hebrang, the aforementioned highly ranked Croatian official who was jailed and later committed suicide under odd circumstances. But, since this was not done judicially, but with a parliamentary declaration, it belongs more in the symbolic-representational category.

Post-war victims were mostly not tried, so rehabilitation was not really a viable path. Some dissidents in the 1960s and 1970s were judicially prosecuted, especially in Croatia, even Tuđman himself. But many later made it to high posts in national politics, and to some degree were legitimized by those convictions., which is why rehabilitations weren't really undertaken. Therefore, both retrospective as well as transitional justice aimed at victims were absent from the process.

Moving on to political-administrative justice, first aimed at perpetrators. Both transitional and retrospective were absent. Privileges and pensions from the communist period were mostly not tampered with after democratization. When it comes to office purges and similar policies, they were conspicuously absent. As was illustrated with the example of Josip Perković earlier, not even high-ranking secret police officials connected to murders were purged. Perković was discharged for a very short period in 1992, but shortly thereafter took a position in the defense ministry, apparently at the behest of Gojko

Šušak, defense minister and very prominent politician from the ranks of the same diaspora that Perković was allegedly targeting (Tportal, 2019b).

Political-administrative justice aimed at victims was present. Already in 1991, a law regarding former political prisoners was passed, and amended six further times, the last time being in 2007. It awards pensions to political prisoners in the way that the amount of 54kn (8€) for each day spent incarcerated is received by the victim. Curious about the law is the way political prisoners are defined, as any person residing in the Republic of Croatia who was deprived of freedom for their political beliefs, political resistance, or the striving for Croatian independence, in the period from the 1st of December 1918 until the 8th of October 1991 (Law on the Rights of Former Political Prisoners, 2007). Interestingly, the lawmakers chose to include everyone deprived of their freedom since the end of the First World War until the day independence was confirmed in a parliamentary vote. It is not clear why they decided on the end of the First World War, seeing as probably very few people who could have experienced wrongdoings as far back as then were still alive.

Needless to say, this is a measure of both retrospective as well as transitional justice. It is aimed at the victims of the later communist regime, the post-War period, War and Fascist crimes, and even possible incarceration in the Kingdom of Yugoslavia. It also applied to inmates of the political prison *Goli Otok*, which became a transitional justice issue in the surrounding region as well. Slovenia awarded its citizens compensation for time spent in the camp as well, and Serbia followed suit in 2012, awarding the exact same amount as in the Croatian law. Montenegro has refused to do the same, which has turned into a domestic political issue (Kračković, 2019). Even though the camp was in Croatia, the majority of the prisoners were either Serbs or Montenegrins, two countries which have historically held close ties to Russia (Previšić, 2013). The law on political prisoners was therefore the main instrument of political-administrative justice aimed at victims in Croatia, and even became a model in the region.

Next, symbolic-representational justice aimed at perpetrators. Most measures found here did not differentiate between retrospective and transitional justice. This type of justice

has been present, especially as post-transitional justice. In 2006, the Croatian Parliament issued a declaration condemning crimes that happened from 1945 until 1990. The chosen years of delimitation are important, because it excludes both the fascist War period and the War of independence. That means there is no "layering", no attempt to lump together different types of crimes, but a direct condemnation of Communism.

In 2017, a government sponsored body called "The Council for the Facing of Consequences of Non-Democratic Regimes" was formed. Its job was to gauge the crimes of Fascism and Communism and make judgments on their character, but more specifically, to decide on the prohibition of certain symbols and salutes, issues which became prominent in public discourse. The Council was mostly made up of historians, academics, jurists etc. and not necessarily victims, it didn't include hearings or something other of the sort, but was academic in character. That is why it belongs in the category of justice aimed at perpetrators.

Symbolic-representational justice aimed at victims was also present. Firstly, there was a measure aimed specifically at retrospective justice. In 1991, a law was passed which had the objective of determining the exact number of post-War victims in Croatia. A commission was founded for that purpose, which was active from 1991 until 2002. Even though the law and the commission were aimed specifically at the post-War period, it included victims from the early 1950s, which adds further credence to the distinction between retrospective and transitional justice that is advanced in this work (Archives Portal Europe, n.d.).

Commemorations of the post-War period are also quite present. One of the most important issues here is the commemoration of the victims of Bleiburg. Each year, thousands travel to the Austrian town to honor the victims that were killed in the events that followed. The event is usually under the patronage of the Croatian Parliament, the exception being some years when the left-wing SDP was in power. This event itself is controversial both because of who many of the victims were, fascist collaborators, but also because of the incidents that regularly take place at the commemoration. Fascist insignia and chants can be seen and heard, which has turned into a political issue even in Austria.

The question of honoring victims versus the relativizing historical crimes comes up regularly, but memorialization of the overall period is quite common.

When it comes to symbolic-representational justice aimed at the later period, victims were commemorated, but arguably not to any great degree. They are memorialized in the parliamentary declaration mentioned in regards to the justice aimed at perpetrators. That declaration went on to say that victims of totalitarian communist regimes deserve compassion, understanding and recognition, but not reparations or anything of the kind, which places the measure squarely in the symbolic-representational category. Secret police archives have been a perpetual stumbling block, and victims have been calling for more transparency in that respect for some time (Crnčec, 2016). The archives recently became a prominent issue because of the political party *Most* (Bridge), which briefly entered into two separate coalition government with HDZ after parliamentary elections in 2015. They called on the opening of the archives and more transparency in dealing with the past. A new law regarding archives was later passed, and most of the secret police files were finally entered into the State Archive, but with some parts missing, most prominently the files which list the collaborators of UDBA (Zagrebački List, 2017).

Another interesting point regarding those files is that Tomislav Karamarko, the former interior and then deputy prime minister who was mentioned earlier was at one point accused of being a collaborator of the secret police. The man who named him was Josip Manolić, a former high-ranking official of both OZNA and UDBA. Since the part of the archive that contains collaborators is missing, it cannot really be deduced what the truth is. On a side note, Manolić was the second ever prime minister of Croatia under president Tuđman, another pertinent illustration of the continuity of communist personnel.

Some anti-communist dissidents who were murdered in the later period had their remains taken to Croatia and interred with honors. Bruno Bušić, who was also mentioned earlier, was interred next to soldiers who died in the Homeland War, a clear case of "layering", where Bušić is considered to have given his life for independence the same way as soldiers fighting in the War.

4.4. Post-authoritarian Transitional Justice

Table 3. Matrix of post-authoritarian measures

	Perpetrators	**Victims**
Criminal-judicial	Arrests and trials of perpetrators of abuses	Judicial rehabilitation of victims of political convictions
Political-administrative	Political bans or vetting of officials	Compensations or benefits for political detainees or victims of abuses
Symbolic-representational	Investigations or declarations of wrongdoings which are not intended for punishment, opening of files	Truth commissions involving statements or hearings with victims, access to files for victims

Starting off with the post-authoritarian context, it must be stated in advance that very little has been done in terms of transitional justice here. Again, the regime did not commit too many serious abuses, it was never really widely condemned for authoritarianism domestically, and its wrongdoings were overshadowed by more egregious ones from the other contexts. Something else which could be speculated on is that the regime could "get away with" more than would normally be acceptable for two possible reasons. There was a war going on and a real external threat to the country existed. This would explain why opposition to the regime arguably increased after the war had finished. Secondly, it had delivered on gaining independence, which might have awarded it some leeway, especially until it was completely secured. After all, the country only became whole in early 1998, when peaceful reintegration of the eastern part of the country was concluded. This can't be fully proven, but it is anyway not the ambition of this thesis to do so. It is more interested in the ways the different contexts are mixed in the overall process of transitional justice. In any case, most of the boxes in this context are empty, meaning that those measures have been absent from the legislative and policy processes.

One box that can be discussed at length is the political-administrative justice aimed at victims, and one prominent incident related to it. In 1991, when the War had already started, five members of a militia group murdered three members of the Croatian Serb Zec family, the father, mother and 12-year old daughter. Even though this murder was committed by paramilitaries, it doesn't belong in the post-conflict context because the

murders happened in Zagreb, far away from the front, and apparently bore no connection to the War (except for the fact that the War opened the door to persecution of ethnic Serbs). The perpetrators were swiftly apprehended but let go shortly thereafter. It seems as if the perpetrators were under political protection, and that pressure was exerted on the judicial system to rule in favor of the men. Four of them were members of a paramilitary group led by Tomislav Merčep, a powerful member of HDZ at the time, and later convicted war criminal. Two members of the family, a son and daughter, survived and escaped Croatia, and later sued the State for damages. In 2004, the case was settled, and the siblings received 1 500 000kn (200 000€) in compensation from the government (Amnesty International, 2004). Even though a court process was involved in the compensation, it is more a case of political-administrative justice because the settlement was arguably more of a political decision, in an attempt to put some of the past behind HDZ, now in power without Tuđman, and seeking to enter the European Union.

Almost all other boxes are empty. There were absolutely no arrests or bans, and most officials continued to serve in many capacities after 2000, when SDP won power in the elections. They did undertake certain symbolic-representational measures, such as giving journalists the access to files about surveillance targeting them during the last decade. The Tuđman regime engaged in this practice a lot during the 1990s, which was justified as a national security matter during the War, but in reality continued after and turned into an effort to silence and control the media (Vurušić, 2012). Therefore, the only other type of measure that can be found is the very little symbolic-representational justice aimed at victims.

4.5. Post-conflict Transitional Justice

Table 4. Matrix of post-conflict measures

	Perpetrators	**Victims**
Criminal-judicial	Arrests and trials of perpetrators of war crimes, mainly military personnel but also political leadership	Judicial rehabilitation of victims of military abuse
Political-administrative	Administrative punishment of military officials	Compensations or benefits for victims of war crimes
Symbolic-representational	Investigations of war crimes not meant for punishment, official declarations of guilt	Truth commissions involving statements or hearings with war crime victims, access to files for victims of war crimes, public remembrance of victims

Post-conflict justice has been perhaps the most dominant form of transitional justice in the case of Croatia, especially when the measures that require the most political capital are weighed more heavily. There are arguably a few factors that add to this. The most likely and most evident is pressure from the international community, which made both international aid as well as access to international and European organizations conditional upon the prosecution of war crimes. Closely tied to this was the existence of the ICTY, the *ad hoc* tribunal created specifically for the investigation and prosecution of war crimes in all the successor countries of Yugoslavia. As many perpetrators, especially high-ranking ones, were arraigned by the ICTY, it left less of that type of measure for the Croatian state. Still, cooperation with the ICTY was very important, as it was a proxy with which the international community gauged the readiness of the State to deal with the crimes that were committed under its watch.

Another factor has most likely been the simple "presence" of the War in the minds of the population. It had ended shortly before some of the crimes started to be investigated, and many relatives of victims were seeking justice, compensation or even mere information about what had happened. Even though a great number of ethnic Serbs left the country, others had stayed, even some who had fought unsuccessfully for the other side, which meant many who had previously fought against each other were living in proximity again.

The War had just happened, left many displaced or without loved ones, caused a considerable amount of devastation, while political oppression was relatively far away and more inconspicuous. On the other hand, there was no real will to go after perpetrators of crimes. Many in Croatia protested the ICTY and especially the prosecution of Croatians alongside Serbs. Cooperation with the ICTY was gradual and reluctant (Subotić, 2015a). Eventually, benefits associated with it prevailed over the doubts.

Criminal-judicial justice against perpetrators was tied to the ICTY. The Hague Tribunal was concerned with genocide, crimes against humanity, and grave breaches of the Geneva Convention, which meant it targeted military commanders. Most prominently, three Croatian generals, Gotovina, Markač and Čermak were indicted for war crimes committed during Operation Storm, which was briefly mentioned earlier. General Bobetko, who fought both in World War II for the Partisans as well as for Croatia in the War of independence, was arraigned for other crimes by the ICTY, but Croatia refused to extradite him. He was also old and ill, finally dying before he could be tried. General Gotovina went into hiding for four years after his indictment, and his case clearly illustrates the external pressure factor in justice. Some EU member states made the extradition of Gotovina a precondition for accession into the EU, even though the Croatian government claimed they had no knowledge of his whereabouts. He was finally apprehended and given over to The Hague, while the other two generals gave themselves over willingly. Gotovina and Markač were found guilty, but absolved after appeal.

Some commanders were first tried in The Hague, after being eventually given over to the Croatian justice system to handle, for example general Norac. He was the first commander to be found guilty of war crimes by a Croatian court, in 2003. Some trials could constitute post-transitional justice as well. Vladimir Milanković and Đuro Brodarac, two wartime police commanders, were indicted for illegal activities during the War only in 2011.

When it comes to trials against political officials, they did not really happen. It is likely that, had they not died, the ICTY would have at some point indicted both Tuđman and defense minister Gojko Šušak (Moore, 1999). Domestically, these trials were also

completely absent. What must be noted is that certain Croat politicians from Bosnia and Herzegovina were tried and found guilty of war crimes in the ICTY. Since they were in many ways connected to the regime in Zagreb, it is tempting to include them in the transitional justice process. But, they were formally politicians from another state and embroiled in a separate conflict. Croatia was not involved in their prosecution, so it would be best to leave them out of this discussion.

Two boxes which are completely empty, meaning that those types of measures were absent, are political-administrative justice aimed at perpetrators and criminal-judicial aimed at victims. This is not surprising, post-conflict justice usually does not entail judicial rehabilitation of victims, since victims of war are generally not tried. Administrative punishment of military personnel is also not very common, but in Croatia it was completely absent. Tomislav Merčep, who was mentioned in connection to the Zec family murder, was at the head of a prominent veteran's organization while he was being tried for war crimes, for example.

Moving on to political-administrative justice aimed at victims, there have been a fair number of cases of compensation, but with many victims waiting more than two decades to get their due. Most lawsuits or claims from ethnic Serb civilian victims had been for years rejected or dismissed, but recently, some headway was made and several plaintiffs took their cases all the way to the European Court of Human Rights, with some getting verdicts in their favor (Arbutina, 2017). This is another manifestation of the international component in the transitional justice process. Only in 2015, a law was passed which guaranteed a certain amount of money to victims of sexual abuse during the War. Most of these measures could thus also be called post-transitional justice.

When it comes to symbolic-representational measures, they have been relatively absent from the process. This is somewhat strange, as symbolic-representational measures are easier to institute and incur less potential cost. In line with most research, but particularly Grodsky (2009), these measures should usually be the most present. This type

of justice would constitute some condemnation of crimes, apology to victims, investigation meant to uncover some crimes, but even possibly some admission of guilt. The State has been unwilling to accept any guilt for the War, as it is seen as just, but also a case of self-defense. An official admission of guilt for wrongdoings in the War would arguably be unacceptable for the Croatian public. An exception to this happened in 2010, when President Ivo Josipović expressed regret for the role Croatia played in the war in Bosnia and Herzegovina during a state visit there, which surprisingly didn't elicit protests (Jović and Lamont, 2010).

Some NGOs help with investigations into missing persons, destruction or theft of property and similar war-time violations, and they are in turn funded by the State. It is important to note that if the State passes measures which are aimed primarily at Croatian victims who were victimized by the opposing side in the War, it is somewhat different than usual transitional justice. The State, for example, also has an exhaustive program for locating missing persons, but it is not primarily aimed at victims harmed by the Croatian side.

5. Overall Discussion and Conclusions

There are a number of conclusions that can be made about transitional justice in multiple transitions from the empirical results in Croatia. Firstly, the hypothesis that the degree of continuity of the political elite from one context to the next will greatly impact transitional justice so far seems to hold. Ciobanu (2015) also points this out. In Romania, her case, the level of continuity has been high, and the same is true in Croatia. It seems from the empirical results very probable that it had a strong effect on transitional justice. This continuity has been mentioned many times, but should also be briefly delved into now.

In Croatia, the continuity can be seen both at the "macro" and "micro" levels. The political party HDZ, which was founded in 1989, just before multi-party elections, is a formally anti-communist party in nature. It is a self-proclaimed center-right party and it led Croatia's transition to both democracy and some form of market capitalism, and led the country out of its union with Yugoslavia to independence. It has been in power for most of the time since independence was gained, and it has throughout this time been one of the two strongest parties, of which the other is the center-left SDP, the formal and legal successor to the League of Communists of Croatia.

Pickering and Baskin (2008) believe that while SDP is the stated communist successor party of Croatia, it would not be a mistake to call HDZ the same. They cite figures which paradoxically suggest that there were more former communists in the anti-communist HDZ than the communist successor SDP. Out of the 298,000 members of the League of Communists, only 46,000 decided to stay in what became the SDP, while 97,000 went on to become members of HDZ. The continuity can also be observed on the individual level, in the many mentioned examples of prominent communist officials who went on to become powerful officials in the new regime, and were in different ways granted political protection.

A further complication arises out of the fact that in the Croatian case, the post-communists, once in power in 2000, had a much better track record of fostering and maintaining democratic norms. This suggests that what was outlined as one of the immediate aims of vetting and purges as transitional justice measures, protecting the new democratic regime from officials tied to the old regime, is problematic in this case. Also, it

just so happens that in the case of Croatia, the officials who left the communist party to join the pro-democracy forces were tied to both the communist regime and the authoritarian one in the 1990s, and therefore to the crimes related to the War as well. Therefore, this continuity most likely had an effect on all three transitional justice contexts, rather than only parts of the process as in the situation that was hypothesized earlier.

Ideally, either a case with continuity of elites between some contexts, or very little continuity at all, could be studied to test whether the opposite was true. That more continuity leads to less transitional justice is intuitive, but the opposite is less so. That less continuity would in turn lead to more transitional justice is not as straightforward, but still very possible. This would make for a very interesting study, but unfortunately it is hard for now to discern such a case.

Another point that can be observed in the Croatian case is that external pressure has a very strong influence on transitional justice. Ciobanu (2015) also argues that external factors are important to the process. It seems that external influence is the factor that can affect transitional justice above all others. In Croatia, post-conflict justice was initially undertaken solely because of the obligation to cooperate with the international community, and without any "soul-searching" (Subotić, 2015a). This arguably led to the most severe measures being the most present in the process, something that is quite unusual. At the same time, the measures which incur less political cost were much more reluctantly undertaken, the very opposite image of the other two contexts.

In post-communist justice especially, the most readily undertaken form of justice was symbolic-representational. Also, justice towards victims was more present than towards perpetrators, as can be most clearly seen in the political-administrative boxes, where the justice towards perpetrators was completely absent, while it was quite present towards victims. Furthermore, criminal-judicial justice was almost completely absent, save for the exception of the trial of Josip Boljkovac. As is clear from the circumstances, that case was quite an aberration. But, along with some other limited examples, such as the strong memorialization of the post-War period, it gives credence to the idea that retrospective justice is more often undertaken than transitional. In the very limited

examples from post-authoritarian justice, a similar pattern can be observed. Less severe measures, those aimed at victims, are more often utilized, and criminal-judicial justice is totally absent.

The main factor which causes this difference in post-conflict justice seems to be the external pressure. One reason for this might be that the international community can be a useful scapegoat for the government when it institutes unpopular measures. It can be blamed because the public perceives the importance of what the international community will give in return. This also means that transitional justice brings with it a "reward", something palpable to be gained from undertaking transitional justice, instead of the more abstract societal goals such as fairness or truth. It could also be argued that this raises the relative importance of one transitional justice context and leads to the effect of "overshadowing" the other contexts that was hypothesized, but, there is not enough evidence to argue this solely from the Croatian case.

Less instances of "layering" transitional justice have been found than was expected. There were clear examples of the past being lumped together, such as the Law on the Rights of Former Political Prisoners, or the ways in which dissidents were being treated similarly to soldiers in the Homeland War. But, more stark examples were expected, such as the Ukranian "lustration law" which targets post-communist and post-authoritarian perpetrators together. In public discourse, this type of perspective towards the non-democratic past is much more common, where crimes are weighed against each other and relativized.

In possible future studies of this type, it would be most interesting to look at the ways layering has manifested itself. The Ukranian example suggests that instances can be found in further cases, probably in Serbia as well. In Serbia, the post-communist and post-authoritarian transitions are somewhat blurred together, and it would be interesting to observe how layering has manifested itself there. It is likely that many other connections between the various contexts and transitions could be uncovered. Further comparative study including Serbia and Ukraine would add much to the concept of multiple transitional

justice. The concept seems so be a valid one so far. Because of the many connections between the contexts that were uncovered in Croatia, transitional justice would not be fully understood without looking at the whole picture.

6. References

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7. Appendix

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