

**Self-Reflection in Post-Criminal Societies:**  
**From Denial to Moral Responsibility**

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**ABSTRACT**

This study focuses on the features and principles of achieving justice in transitional societies whose recent past was marked by mass, regime-sponsored crimes. The main argument is that such societies and their members are confronted with moral challenges precisely because the mass crimes are not merely tragic events of yesterday, but their consequences shape the transitional condition to an important extent. I hypothesize that the criminal past can not be simply eradicated or made irrelevant by a political choice of a new regime. As William Faulkner once said: "The past is not dead, it's not even past." The puzzle put forth is how to deal with the issues of justice in cases where bystanders are many and there is no perfect justice available, yet the need of perfect justice is there. I will investigate whether bystanders can and should be held morally responsible and whether post criminal societies have a *duty* independent of transitionally-related requirements, to "work through the past."

## INTRODUCTION

This study focuses on particular sub-type of societies in transition from a criminal past marked by mass crimes. The main argument is that legacies of mass crimes are distinguished by the character of the requirements they pose on such societies and their members (e.g. Germany after Nazism, South Africa after the fall of the apartheid regime, or Serbia after Milosevic). Mass crimes committed during the previous regime interest me primarily because of consequences they produce for a post-regime change society and for all its members, save the perpetrators themselves, i.e. save those who should be subject to criminal procedure. It might be said that "criminal law is only a very rough guide to what is morally impermissible . . . [and that] in the last analysis, the responsibilities that matter are an individual's moral responsibilities."<sup>1</sup> The perspective that interests me is that of individuals who belong to a group on whose behalf mass atrocities are done, and of society and polity in which they live. In particular, I would like to explore moral challenges faced by *bystanders*.<sup>2</sup>

In other words I am trying to address the following puzzle: on the one hand, the greater the number of people who supported the criminal regime, more pronounced is the need of "working through the past"<sup>3</sup>. On the other hand, the more there are such people, the more difficult it is to address the criminal past. Simply stated, the puzzle is: how to deal with the issues of justice when there is no perfect justice available and the need of perfect justice is there?

I start from a simple intuitive assumption (**assumption #1**): there is something deeply troubling and wrong in the culture of silence (implicit support for the crimes) in response to the recent sinister past on the part of bystanders.

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1 Wasserstrom, Richard. "The Relevance of Nuremberg" in War and Moral Responsibility, A Philosophy and Public Affairs Reader, Princeton University Press, Princeton, New Jersey, 1974. P. 158

2 Refinement of the concept "bystanders" remains to be explored – in the light of Harald Welzer's point made in a lecture given on March 21, 2007 at the CEU "How Ordinary Citizens become Mass Murderers?" that the borders between bystanders and perpetrators are blurred because bystanders participated in altering the new moral reality.

3 T. Adorno, Critical Models: Interventions and Catchwords, Columbia University Press, New York, 1998, p. 89

The following assumption (**assumption #2**) is that the character of the criminal past rules out the very possibility of a new beginning *ex nihilo*, where the act of the regime change would be perceived as a watershed between a “then” and a “now.” Mass crimes are not merely tragic events of yesterday. Their consequences shape transitional condition to an important extent: the past has not passed. It is rather present in the form of legacies. It follows that the criminal past cannot be simply eradicated or made irrelevant by a political choice of a new regime to neglect it.

The past has to be dealt with. How? Any effort to answer this question has to take into account at least three related considerations: (1) a careful *identification* of legacies; (2) the character of their *presence and influence* today; and (3) the character of their political and cultural *interpretation* in a transitional society. The type of legacies relevant for this study can broadly be identified as “the legacies of the criminal past.” The term “criminal past,” refers to a specific set of features, values, patterns, attitudes, and actions of the old regime, as well as to their consequences identifiable after the regime change. I argue that the problem of legacies affects not only the choice of the future-oriented policies, but that it also opens the question of moral legacies, of politically relevant memory and responsibility. I argue that because the choice between trying to remember and reflect, or, alternatively, to forget and deny [with all the real-life combinations], on the part of the new elites is *normative*, it is open to normative analysis.

The legacies of regime-sponsored crimes of yesterday raise multiplicity of questions about successor societies. I will distinguish between two types of transition-relevant legacies. The first type is common to all transitional regimes, and is comprised of the economic, socio-cultural, political and legal remnants of the old regime. This is an obvious obstacle to the process of democratization – it is the existence of these legacies that has brought to life the practice and theory of transition to democracy. Democracy does not come to life by the simple act of dismantling the old regime, followed by design of an institutional framework

conducive of a democratic alternative. When we talk about the societal, cultural, economic, political, etc. complexities and contradictions of transition, we point to the obstacles to democratic normalcy that we have inherited from the recent past. We do not deny that the past shapes, or at least affects our societal, economic, political concerns of today. We do not usually deny cultural constraints either, so we talk, for example, about difficulties in establishing a democratic political culture in a society whose members lived and formed their values, attitudes and patterns of behavior in a repressive collectivist political and cultural context. So, the past matters because both the constitution and the manner of reproduction of the old regime used to rest upon ways of thinking and acting alien to those of a democratic order. The regime change substantially destroys and delegitimizes those values and patterns, but this achievement does not equal doing away with the past in a manner that would make room for a new beginning *ex nihilo*.

Post-conflict societies may seek to tailor the image of the past in a manner considered appropriate for their present political, social or cultural purposes; may promote official memory based on the officially established truth about the past; may propagate the officially established politics of forgetting, followed by the corresponding ideology of a new beginning; may aim at a comprehensive legal mastering of the past, which would be based on a systematic and broad identification, trial and punishment of the individuals found guilty for the past crimes; may prefer some form of amnesty; may limit criminal justice to perpetrators of the most terrible crimes, while at the same time additionally institutionalizing the issue of responsibility in the form of truth commissions; may mourn, build memorial sites, compensate victims and try to reconcile with their community; or, may continue to blame the victims for the evils of the past. Many post-conflict societies have opted for one or a combination of such measures.

My research question focuses on the attitude to the past of bystanders, i.e. those members of the group who are neither criminally nor politically responsible, but who in different ways supported the old regime and its criminal practices. I am interested in exploring whether we can talk about the responsibilities (backward and forward looking<sup>4</sup>) of the group in whose name the crimes were committed. I will investigate whether they can be held morally responsible<sup>5</sup>, whether they have duties to respond to those who have been harmed<sup>6</sup> and duties to the future generations. Reformulated, the question is whether “every single autonomous member of a given ethnic, cultural or national group could, at least partly, be morally responsible for a blameworthy act, omission, or practice committed by that group?”<sup>7</sup>”

Hypothesis: For transitional regimes after the period of mass crime there is both a (transition-dependent!) *necessity* and a (considerations-of-transition-independent!) *duty* to confront the past. *Necessity* refers to the empirical fact of the presence of the legacies of the past in a democratizing context. When acknowledging necessity of dealing with the past, we are principally forward-looking: we want to remove obstacles to the stabilization of democracy. *Duty*, on the other hand, I see as a normative category: because of the character of the past, we ought to deal with it. In very simple terms, we cannot avoid the following question: How should we live, what is the right thing for us to do, after the mass crime committed in our name? The talk is about moral duty, independent of transitional-related considerations<sup>8</sup>.

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4 Linda Radzik, “Collective Responsibility and Duties to Respond,” *Social Theory and Practice*, Vol. 27, No. 3, 2001

5 Thompson, Janna, “Collective Responsibility for Historic Injustices,” *Midwest Studies in Philosophy*, XXX (2006), p.1

6 L. Radzik

7 Juha, Raikka, “On Disassociating Oneself from Collective Responsibility,” *Social Theory and Practice*, Spring 1997, Vol. 23, Issue 1

8 I presume that transitional-related consequences leave in tact the “collective narcissism [that] lies in wait of being repaired and seizes upon anything that brings the past into agreement with the narcissistic desires . . .” in Theodor W. Adorno, *Critical Models: Interventions and Catchwords*, Columbia University Press, 1998, p. 96

Why the bystanders? Because I assume **(assumption #4)** that “only to the extent that members of an offending group recognize their complicity in sustaining an unjust regime and/or benefiting from the mistreatment of another group is it possible for a new and more just society to be created. To compensate the victims is not enough.”<sup>9</sup> If we consider that citizens have a duty to participate in supporting institutions and processes that enable their state to act justly and effectively, in transitions from criminal past, where **(assumption #5)** the course of justice has been conducted to some degree, moral questions concerning political responsibility must be, as Habermas argued, discussed outside the realm of criminal law, in the soft medium of public dialogue.<sup>10</sup>

The assumption **(assumption #6)** is that their past is relevant for their present because of the presumed continuity in people's attitudes, values, behavior. The prevailing attitude toward crime is silence (this is what we saw in Germany and in Serbia). I argue that a moral challenge is created due to the severity of the character from which the society is transitioning. Once silence is identified (Germany, Serbia), then the question remains whether this attitude can be justified? Can this politics of silence be justified? If we agree with Harald Welzer's<sup>11</sup> argument that one single coordinate need be altered – *social belonging* that separates “us” from “them” (to whom “our” principles of morality do not apply) – to create conditions for complete elimination of the “other” then, once the criminal project has ended, is it not only permissible but also necessary to investigate these inclusion/exclusion practices? This assumption **(assumption #7)** has been persistently confirmed by each atrocity ever committed.

These considerations point to the crucial importance of the *context*. And

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9 Schaap, Andrew. “Subjective Guilt and Civic Responsibility: Jaspers, Arendt and the ‘German problem,’” Paper for the Political Studies Association-UK 50th Annual Conference, April 10 – 13, 2000, London

10 J. Habermas, “Double Past,” in: J. Habermas, *A Berlin Republic. Writings on Germany* (Cambridge: Polity Press, 1998)

11 Harald Welzer's lecture on March 21, 2007 at the CEU “On Killing and Morality: How Normal People Become Mass Murderers,” presented by the Department of History, March 21, 2007

more: they inform us that the context is not an objective given. The cases mentioned provide us with the insight that the answer to the question – what counts as the relevant context when choosing an appropriate strategy of working through the past? – is itself a matter of interpretation. It is typically political and cultural elites who join together to offer an authoritative interpretative identification of the context. They do this led by some preferences and perceptions of the situation. I want to argue that their choices should be not only *described* and *explained*, but also *evaluated as right or wrong*. In short, empirical, analytical and normative analysis is needed.

### **Phase I**

The first step consists in a historiographical reconstruction and accurate description of the events of the recent past. However, given that this is not a historical study, I will simply state that facts about these regimes are known and ultimately unambiguous in their tragic simplicity<sup>12</sup>. What we have in all the cases are grave injustices: mass murder, torture, persecution of whole groups of the population, forced deprivation and destruction of property. Examples: Germany after Nazism, South Africa after the fall of the apartheid regime, and Serbia after Milosevic. I intend to focus on one particular issue: the character of the attitude of the bystanders to the crime, the main feature of which will be identified as the culture of silence.

### **Phase II**

I start the next step by observing that the majority who had been supporting the criminal regime as bystanders, after the regime change become citizens of a democratizing regime. I further observe that their typical attitude to the recent past can be summarized as the "culture of silence." A continuation of the essentially same attitude identified under the criminal regime, similarities and

differences, to be explored.

A combined analysis of three factors: the nature of the regime, the nature of the relationship between the regime and its subjects, and the nature of the crime committed follows. A set of analytical categories will be introduced with the aim to provide description with explanatory power. The analytical summary offered below aims at introducing explanatory categories that would be of use both for a study of particular cases and for a comparative study of mass atrocities. Analytical categories relevant for the time of the crime are: criminal regime, collective crime, perpetrators, bystanders, ideological justification of the crime, etc; analytical categories relevant for the transitional condition: legacies, and their interpretation, attitudes – to the crime, to perpetrators, to victims, emotions; culture of silence, responsibility vs. guilt, individual and collective, etc.

In this phase I will provide: 1. a careful *identification* of legacies; 2. the character of their *presence and influence* today; and 3. the character of their political and cultural *interpretation* in a transitional society. Basically, before going to normative analysis, categories have to be established. The context is defined through analytical categories.

### **Phase III**

Third, the need for a normative perspective will be defended and explicated, and basic normative categories will be introduced.

The question is not whether the criminal past bothers the bystanders, but that it should bother them, especially from an *identity* point of view. Moral fact (crime) of yesterday produces moral challenges for today. Sociological research shows that people knew about the crimes as they were committed. This is where the question arises, what is beyond blame? Can the borders of morality be determined? What is the threshold for moral autonomy . . . the capacity to think or act? What are the borders of complicity? Is responsibility beyond blame?

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12 Or in the words of T. Adorno: “. . . the evil whose malevolence requires as little philosophical proof as does its

The question is NOT "what happened?" but "what is happening today?" People's relations towards yesterday's crimes present a moral challenge. The aim is to establish that citizens have tacitly or actually given their consent to be bound by the decisions of the legitimate authorities of their state, and by doing so they acquired responsibility for its past, as well as present, decisions and actions. (Janna Thompson, p. 161)

## **METHODOLOGY AND LITERATURE REVIEW**

I will reference societies marked by regime-sponsored crimes, which will be used to illustrate a variety of approaches to "working through the past" to help inform my analytical categories. This will serve to strengthen my normative claim that for transitional societies and their members after the period of mass crime there is both a necessity and a duty to confront the past. Theoretical lens used to select, read, interpret, and construct the representation of my study will rely on moral philosophy (spanning subjects of responsibility, silence and denial, politics of forgetting and memory, justice, morality and ethics, etc.): Kant, T. Adorno, B. Williams, Rawls, Jaspers, Arendt, Habermas, Walzer, Ricoeur, S. Cohen, Linda Radzik, W. Benjamin, Nagel.

I will look to Hannah Arendt and Karl Jaspers and their considerations of the case of collective guilt in post-war Germany, which provides a common reference point for other societies seeking to reckon with past wrongs, more specifically, I will rely on them to answer "To what extent should citizens be judged responsible and to what extent should they feel responsible for state wrongs perpetrated on their behalf?" Stanley Cohen on states of denial after atrocities; Thomas Nagel and Michael Walzer on war, moral responsibility and justice; Paul Ricoeur on just actions, persons, and institutions as well as the subject of rights, the concept of responsibility, retribution, sanction,

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existence . . ." (p.10)

rehabilitation, pardon, the act of judging; B. Williams on morality and ethics; T. Adorno on "working through the past;" etc.

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