

The Political Economy of Forgiveness*

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Eugene de Kock was the most notorious operative of the Apartheid regime in South Africa. He was known among the black population he worked so hard to oppress as 'Prime Evil.' When he concluded his first day of testimony before South Africa's Truth and Reconciliation Commission he made an appeal to meet with the widows of husbands who had died in a bombing that he had planned. He wanted to apologize to them. One of the widows described her encounter with 'Prime Evil' afterwards and said that she hoped that he saw her tears not only as tears for her husband, but also as tears for de Kock himself. She said that she wanted to hold his hand to let him know that there was indeed a hopeful future and that he himself could change.

Such a dramatic act of forgiveness is rare. Nonetheless, in many of the newly formed democracies of the late 20th and early 21st century this capacity for forgiveness is an act of profound practicality. Regime shifts from totalitarianism to liberal democracy requires learning to live with one's enemies and to build a future together. Lives will be intertwined with the lives of others who grossly violated human rights or were privy to those who did. An ethic for the treatment of one's former enemies must emerge that balances retribution, vengeance, and reconciliation.

Using basic economics to negotiate this balancing act, we provide arguments why in post-totalitarian situations the most practical policies are ones that focus on reconciliation instead of retribution and vengeance. Our core argument is that as a practical matter, societies aiming to transition from a totalitarian order must not let the demands for retribution bankrupt the future. In other words, individuals that have suffered harms and injustices in the past cannot allow the pursuit of justice to erode the

ability of the social system of exchange and production to serve as a basis for future peaceful social cooperation.

It is our contention that a successful transition involves balancing a decisive break with the previous regime with the simultaneous minimization of the costs associated with the administration of justice. Where the benefits of pursuing transitional justice outweigh the associated costs, the administration of justice is a net benefit and contributes to the overall transition to liberalism. However, where the costs outweigh the associated benefits, pursuing justice will have the counterproductive effect of damaging the likelihood of establishing a sustainable liberal order. In short, pursuing transitional justice is not an all or nothing endeavor but rather must be thought in terms of marginal, or additional units. The key question is: does it make sense to invest additional resources in administering justice against members of the previous regime?

Totalitarian regimes are by definition those that sought to infiltrate and control all walks of life (economic, political, cultural) and attempted to eradicate the distinction between state and society. In the former Soviet Union, for example, in addition to the overt violence perpetrated against the population by its own government, the Communist Party's reach was felt throughout society driving the free economy, free expression and free worship into a *samizdat* existence. As Timur Kuran explains in *Private Truth, Public Lies* this situation forced the population to 'live a lie.' In other words, the regime forced one to engage in preference falsification, to live one way and speak another; to hide true preferences for fear of persecution; to suppress one's individuality and moral standards to escape oppression from an overzealous regime. In this paper we do not address the question of the sustainability or lack of sustainability of such regimes over

time, but instead address the questions associated with the political economy of the post-totalitarian regime.

In order to pursue this line of inquiry we ask some fundamental questions. How do people who were forced to 'live a lie' move forward? What should be the policy toward those who compelled them to live a lie? What are the benefits and costs associated with administering transitional justice? What mechanisms allow individuals to transform enemies into neighbors in order to reap the economic, political and social gains from peaceful social cooperation and exchange? Finding answers to these questions is critical to understanding the viability of transforming former totalitarian societies into sustainable liberal orders.

For the most part research regarding the fundamental questions stated above has been limited to history, comparative law and political science. Our primary aim is to contribute to this existing literature by employing the tools of economics. We seek to analyze transitional justice and retribution through an economic lens. It is our contention that doing so will contribute to our understanding of how to effectively transition away from totalitarianism toward sustainable liberal institutions.

Indeed, when one looks at the fundamental nature of the issues of retribution and transitional justice, it becomes evident that economic issues are of central importance. For instance, a transitioning society must weigh the costs of investing additional resources in pursuing and administering justice versus the associated benefits that will be generated by undertaking such activities. The tools of economics can assist in clarifying and adjudicating between these various costs and benefits. Further, the calculation of retribution requires some concept of a rate of interest. Economics provides a means of

understanding the consequences of this realization by considering the costs associated with determining the magnitude of retribution for past injustices. Finally, economics focuses on the central role that incentives play in social and economic interactions. As such, it can provide insight into the array of incentives that individuals faced in the previous totalitarian regime. This is critical for understanding if individuals who participated in the old guard were truly criminal, or instead, if they participated as a means of survival. As we will discuss, appreciating the incentives that individuals faced in the past regime is a key issue in determining whom to prosecute.

Before proceeding, we should clarify some terminology and assumptions. We use the term ‘transitional justice’ in the broadest sense to include *both* endogenous transitional justice and exogenous transitional justice. The former involves the administration of justice by indigenous citizens within the transition country. The latter includes the involvement of external, international actors in the administration of justice. Examples of the former case would include many of the post-communist countries such as Hungary, Poland and the Czech Republic that have attempted to indigenously administer transitional justice as part of the broader transition process. U.S. involvement in post-World War II reconstructions of Japan and Germany, including the administration of justice through the trials of war criminals, would be examples of the latter category.

While fully recognizing the important distinctions between the indigenous and exogenous administration of transitional justice, our focus here is on understanding the broader implications of pursuing justice in the transition from totalitarianism to liberalism. For example, the core tools of transitional justice often include trials for war criminals, truth commissions, reparations and purges. In some cases, the administration

of justice conflicts with other goals of the transition. Resources that are used in administering transitional justice cannot be used in other areas of the transition. Trying former political leaders can lead to the loss of local knowledge regarding the operation of the country. The payment of reparations may clash with economic reforms and the future economic health of the transition country. Economics provides a means of analyzing these and other trade-offs associated with administering justice.

Is it the case that ‘To Forgive Is To Forget’?

A core principle of basic economics is the notion of opportunity cost. The economic way of thinking, in fact, is defined in terms of the persistent and consistent application of opportunity costs. In weighing decisions, the chooser must consider the expected stream of benefits from pursuing one course of action against the expected costs of forgoing another course of action. The focus of economic analysis is on the future because it is only the future that can be changed. The past is irreversible.

The concept of the ‘sunk-cost fallacy’ is central to all economic analysis. The basic idea behind the concept is that if you have invested in a hopeless investment, it does not follow that you should continue to invest due to concern that stopping will cause you to lose everything you have invested so far. The sentiment is true, you will lose, but it should be irrelevant from the point of view of making wise future decisions. All resources already invested in the hopeless investment cannot be recovered. As such, the relevant question is your future investment decisions. The key question is: should you continue to invest money and resources in a hopeless endeavor, or should you look for a

more promising investment alternative? Obviously, you should redirect your activities to the more promising ventures. Sunk costs, the saying goes, are sunk; forget about them.

This is the case because nothing you can do now can change what took place, but the current decision *will* impact what will take place in future periods. If we take this basic lesson of economics to heart and apply it to the post-totalitarian situation, the past injustice is precisely that --- past. What matters for the crucial constitutional moment of regime change, is to focus constitutional craftsmanship on creating rules for future social cooperation rather than addressing past social conflicts. But this does not mean that past events will not influence expectations and perceptions. The past frames our choices, but it cannot be an object of choice. What must be considered are the future costs and benefits.

In the context of forgiveness, the 'sinner' cannot forgive himself for his 'sin.' It must be the aggrieved party that pardons. Both parties, however, must figure out how to move forward. Forgiving is not necessarily forgetting, but forgiving is a prelude to moving on and focusing on the future rather than the past. Once forgiven the debt is paid.

In an act of profound symbolism intended to invoke the politics of forgiveness, when Vaclav Havel, the first President of the Czech Republic, was given the opportunity to look at the names of those who informed on him to the old regime, he crumpled up the paper and placed it in the small of his back where he could not see the names. Havel continually counseled his countrymen in the early period of post-communism that they not forget the consequences of hatred, but that they move on with the task of creating a

new liberal regime and cultivating a cosmopolitan attitude. Havel argued that citizens must live in truth, but not seek vengeance based on that truth.

The trick of course, is not to forget the errors of the past as those who do are often condemned to repeat them, but to move on from the past injustices and focus on the possibilities of the future. Similarly, the sunk-cost point in economics is not that one should forget their past investments, but rather to move past those previous decisions and focus instead on more prudent decisions in the present and future. Decisions today cannot influence the activities of yesterday, but learning from yesterday's decisions can help in making better choices today and tomorrow.

To be clear, we are not arguing that there is never a benefit to pursuing justice. Indeed, there will often be net benefits to pursuing justice for past wrongs. But it is important to realize that investing resources in the administration of justice means that those resources are diverted away from other transition activities that can also yield a future stream of benefits. In other words, there is an opportunity cost to investing resources in the administration of justice.

It is our contention that the future benefits of social and economic cooperation associated with a liberal order will tend to quickly outweigh the benefits that can be generated from seeking additional justice. Given the recognition of sunk costs, this trade off – the future expected benefits from pursuing justice, versus the future expected benefits from establishing a liberal order – is the relevant consideration for policy in the present period.

Does ‘Time Heal All Wounds’?

In negotiating between the past and the present in any post-atrocity situation, the question of just acquisition cannot be put aside. Ill-gotten gains must be addressed according to theories of rectification. But theories of rectification must also be operational and utilitarian considerations must be weighed alongside concerns with justice in acquisition. In other words, the rectification of past injustice must pass through several utilitarian criteria for actual justice to be served.

In *Anarchy, State and Utopia*, Robert Nozick argued that a complete principle of distributive justice would be such that the current distribution of resources would be deemed just if (and only if) everyone is entitled to their current holdings. Further, any change to that distribution is deemed just only to the extent that the new distribution that emerges from a previous just distribution comes about through legitimate, non-coercive means.

By definition though, in post-atrocity situations we are dealing with past injustices where the distributions of holdings in society were obtained through illegitimate means. However as the political theorist Adam Tebble has argued, even in the best circumstances reconciling Nozick’s theory of entitlement and his theory of rectification is not an easy task due to the problems that time and ignorance introduce into social theory. In order for Nozick’s theories to work, one would have to be able to identify the victims and perpetrators of the unjust act and/or their descendants, and identify through some tracing process the lost holdings and who currently possesses them. If the holdings cannot be established then a just compensation must be offered to victims so that they are no worse off than if the injustice had never taken place.

Justice would seem to require an accurate time discounting in compensating the victims to make them whole. Legal principles of restitution often stress the ideal that in the face of a criminal destruction of property, the victim (the owner of the destroyed property) should be made whole --- the full value of the property should be returned, including the time and trouble associated with making the claim. There seems to be little objection that could be made raised against such a standard if the time frame is relatively short and the ownership rights over physical property are clearly identified. But serious problems are introduced by the passage of time.

The economist Tyler Cowen, among others, has pointed out how the attempt to right past injustice by a straight forward restitution principle, using basic compounding techniques, can quickly lead to a financial claim that exceeds the current aggregate output of an entire economy. Financial constraints are not the only problem. Everyone living today could, if they traced their family history back far enough, find ancestors that were victims of injustice. Few land titles can withstand critical scrutiny if history is examined with an eye toward just acquisition. The philosophical quandary of where and when to draw the line on how far back we must trace to speak of justice becomes a question of extreme practical importance.

A popular Russian joke circulated in 1989 that captures an important aspect of the conundrum. According to the joke, in 1956, when the Hungarians wanted independence, Khrushchev sent in the tanks. When the Czechs wanted independence in 1968, Brezhnev sent in the tanks. But in 1989, when the Baltic States wanted independence, Gorbachev had to send in the accountants. Like much else during the Soviet period, jokes communicated deep truths that were often missed in official discussions. The reason for

the accountants is because while Estonia, Latvia and Lithuania could claim a great injustice from the 1939 deal that turned their countries into part of the Soviet Union, the Soviet government had made numerous improvements to the infrastructure of these countries.

The Czech people, for example, suffered great injustices first from the Nazis and then Communists, but what exactly can be done to make the Czech people whole in accordance with the principle of restitution? As a matter of practical policy, it is our argument that as the temporal distance between the act of injustice and the claim made of being wronged lengthens the demand for justice must become weaker. Time, it appears, must heal these wounds otherwise the preoccupation with righting past injustices will result in bankrupting the future in order to address the past.

For instance, claims against property on the grounds of past injustices create the very real possibility of the uncertainty of property rights, which are a centerpiece of any liberal order. When a government announces a restitution program, a number of claims will emerge. Because these claims take time to sort through, especially if the judicial system is weak, there will be general uncertainty regarding future claims to property titles. As such, we should expect fewer individuals to invest in property they currently hold for fear of losing that property, via the restitution program, in future periods. The longer claims can be made against other people's property, and the longer the rectification of those claims take, the longer the uncertainty will exist and the less likely a liberal order will emerge. Under such uncertainty, citizens will be less likely to make the necessary investment in the future and the transition will be stifled.

Isn't it better to 'Let Sleeping Dogs Lie'?

Once we recognize the financial constraint that simple compounding raises for addressing past injustice through restitution, we can address other practical issues associated with moving forward in the transition process. In the post-totalitarian situation, the reasons for moving forward with minimal attention to the past as an issue of policy (as opposed to an intellectual issue of history and cultural discourse) are numerous and include issues of credibility and legitimacy; human capital, local knowledge and organizational skills; and memory and moral hazard. Again the issue, from the economic point of view, is that the only object of choice is future activities and not those in our past and the subsequent implications of this realization for public policy.

The problem of credible commitment

Any model of regime change must address the issues of credibility and commitment. In dealing with dogs, it is often said that, 'once bitten, twice shy.' This saying is intended to communicate that when approaching a strange dog one should first trust, but if the dog bites rather than wags his tail, it is best to avoid contact in the future. Owners of aggressive dogs often solve this problem by putting muzzles on their dogs when they are out for walks in the neighborhood. Efforts to constrain the aggressive side of the dog are similar to the measures that must be taken to constrain a reforming government. Aggressive governments must be muzzled through effective constraints.

In the absence of such constraints, governments have an incentive to defect on their prior policy commitments, trading off the long-term benefits of reforms for the short-term benefits of taking. In short, if citizens expect government to renege on their

previously announced policy, they will not trust the initial announcement and will refuse to make the necessary investment for sustainable social change. The result is that the gains from peaceful social cooperation will go unrealized and the new regime will be unsuccessful in its attempts to establish a new order.

This commitment problem is a central issue in any transition. However, the problem of transitional justice compounds this commitment conundrum for regimes. As discussed, in totalitarian societies individuals were forced to 'live a lie' and as a result attempts by the regime to make decisive breaks from the past are viewed as part of that lie. As long as individuals do not believe the regime, they will not trust pronouncements about reform. As a result, during the transition period the regime is confronted with the dual task of establishing credible commitments to bind itself and limit its power, while simultaneously signaling effectively that the regime's promise to limit its power is in fact credible.

Yet another issue is that often, political actors utilize the tools of transitional justice for purposes other than truly seeking the righting of past wrongs. Such occurrences may further reduce willingness of citizens to trust the regime while also stifling the establishment of a liberal order. For instance, those who were dissatisfied with the distribution of wealth during the transition were often the main proponents of lustration laws in many post-communist countries. Further, in many post-communist countries, lustration laws were used to reduce political competition both within and across competing factions and parties. In these instances, the tools of transitional justice become a means of redistribution for personal gain instead of remedying true injustices.

As such, they reduce the credibility of the new regime and the process of transitional justice.

The trade-off of justice for human capital

At first blush, transitional justice with elaborate revelations of past injustice and appropriate prosecution and restitution might appear as the most effective way to signal a break with the old regime. However, given the reasons raised above regarding financial constraints, the difficulties of separating out just and unjust acquisition and issues related to credibility, the quality of the signal might not be as high as first thought. Yet another problem with prosecution, at least in the post-totalitarian situation, is that a large stock of the human capital in a society is actually tied up in people who populated the ruling regime.

Totalitarian regimes typically sought to put their imprint on all aspects of intellectual, political, legal, cultural and economic life. Party cells, for example, in the Soviet Union existed in all state enterprises. And by the nature of the system the *samizdat* culture of dissidents within a totalitarian regime existed in a strange symbiotic relationship with the corrupt official regime. In the economic sphere, this was seen in the intersection between the official state sector, the unofficial planning system, and the unofficial market system.

Within the totalitarian economic system, the official planned sector relied on the unofficial extra-planned system to fix bottlenecks in supply so that the production process could reasonably approximate official output targets (this does not address the issue of output quality and the problems associated with perverse incentives and lack of quality

controls). Extra-plan actors (i.e., the *tolkachi*) served to work outside the plan to attempt to pick up the slack in the economic management in the production side of the economy. Since there were no alternative supply networks to the state enterprise sector, consumer frustrations were addressed in totalitarian economies through the black market. Goods were ‘stolen’ from the state-planning sector, and sold in the underground economy at black market prices to address the chronic shortage problem in the official consumer economy.

In the totalitarian system this was the experience that individuals had with exchange and production. Everyone was connected to the totalitarian system. Enterprise managers, middle managers, street level traders all had their human capital tied to the system. The totalitarian system was unjust, and certain individuals were criminals, but since all within the system had to maneuver outside of the system, all were forced to deal with unjust acquisition. ‘Capitalist crime,’ in other words, was part of the ‘living the lie.’

What is true of the economic system is also true of political, legal, cultural, scientific and intellectual life. Human capital resided in individuals who had to work within the system. Obviously some brave dissidents bucked the system explicitly, but they all came from within the system. Eradicating those tied to the system will indiscriminately result in a loss of human capital that will be counter-productive to future reform. A break must be made with the past, but not necessarily with the human capital that resides in individuals tied to the system. Without the local knowledge of many of these individuals, the new system will be unable realize the full gains from social cooperation.

In sum, a central dilemma in any transition is that members of the old guard possess capital and local knowledge that is critical to the functioning of the society. A balance must be struck between signaling a break with the past while simultaneously maintaining enough capital and local knowledge to allow for the evolution of the new regime. Consider the following historical examples to illuminate the difficulty in assessing the trade-off between justice and human capital.

During the post-World War II reconstruction of West Germany, a key issue was how to handle the judicial system. The judiciary had, to a large extent, been supportive of the Nazi regime, legitimizing many of its activities. Given this realization, the occupying forces had to make a decision. Should it disband the judiciary, and all the local knowledge that judges possessed, or should it allow for the continued operation of the courts? Shutting down the courts would require the training of new judges and administrators that could take years, if not decades. On the flip side, the main concern was that, if left in place, judges overseeing cases of transitional justice would be the same judges that had previously been supportive of the old regime and the very injustices that were now being tried. Ultimately, the courts, along with administrators and judges, were kept in place. This example illuminates a fundamental difficulty in the transition process – signaling a break from the past while simultaneously maintaining the human capital necessary for the daily operation of the social system.

As another example, of the trade off between splitting from the old regime and maintaining human capital, consider the current U.S. occupation of Iraq and more specifically the decision by Paul Bremer, head of the Coalition Provisional Authority, in May 2003 to purge all senior members of the Baath party from public life and civil

service. Following this initial decision, it was determined that the Iraqi army would be disbanded as well. The logic behind these decisions was grounded in the process of ‘de-Baathification,’ the process of removing all aspects of Hussein’s Baath party from the reconstructed Iraq.

However, the de-Baathification decree had several unintended consequences. First, those with local knowledge of the daily operations of Iraq were removed. As such, the occupying forces lost access to important sources of knowledge, information and experience regarding fundamental operations of the country. Second, the dissolution of the army polarized several hundred thousand individuals with military training and access to weaponry. Banned individuals not only found themselves unemployed, but banned from participating in the ‘new Iraq.’ Banished from the reconstructed Iraq, the only place for many of these individuals to find acceptance and support was with the insurgency.

The issues associated with the case of de-Baathification can be linked to the concept of preference falsification discussed at the beginning of this paper. Recall that preference falsification refers to the gap between privately held preferences – what one would express without social pressures – and public preferences that are observable to others. Preference falsification can help us understand why occupiers misunderstood the negative incentives that members of the Baath party faced. In reality, some members were most likely true supporters of the Hussein regime. However, other members most likely supported the activities of the Baath party because it was the only way that they could survive under the totalitarian regime. This dilemma of preference falsification can be generalized to many cases of transitional justice. The problem for administering

justice is that differentiating between these two groups – true criminals and those that acquiesced to the totalitarian regime for survival purposes – is nearly impossible.

The problems of retroactive legislation, moral hazard and legitimacy

Yet another key issue is the problem of retroactive legislation. One of the major problems with totalitarian regimes were the intrusive and aggressive activities that violated the rights of its citizens. Given that a central desire in the post-totalitarian moment is to establish a government constrained by the rule of law, rectification measures that violate liberal principles of due process and rule of law must be rejected.

In short, since the totalitarian regime was not violating laws at the time of their actions, they cannot be subject to the laws established during and after the transition. Further, retroactive laws violate the rule of law because no individual would ever be able to predict how laws would affect them or what actions should be avoided so as not to violate future retroactive laws. In the language we have been using, the signal that will be sent by any movement away from liberal principles of limited government is that checks on government power are paper checks only and not truly binding. As discussed previously, the rational response to weak constraints on government is for citizens to refuse to make the necessary investment in the new order resulting in the undermining a successful transition.

Why pursue justice at all?

To reiterate, the arguments put forth above are *not* meant to indicate that all past acts of justice should be forgiven. Past injustice must be recognized. In the post-totalitarian

situation the crimes against humanity that resulted from an aggressive and unconstrained state must be acknowledged explicitly at a cultural and intellectual level. Further, the necessity of constraining the state must be recognized explicitly and formally written into law and politics. We are emphasizing that when deciding whether or not to invest additional resources in justice, an eye must be kept to the future while considering the relevant costs and benefits. This is important, because as we have noted, the costs associated with transitional justice can quickly increase and outweigh the benefits associated with securing retribution.

Pursuing some level of justice is important for other reasons as well. For instance, forgiveness of past injustice may have consequences for the future behaviors in terms of creating a moral hazard problem. Moral hazard refers to the increased risk of risky (in this case 'immoral') behavior, and hence a negative or undesired outcome, because the individual that engages in such behaviors fails to suffer the full consequences of his actions. In short, completely neglecting past injustices is the equivalent of assigning a price of zero to such actions. With the price set at zero, we would expect future acts of injustice to occur because those who carry out such acts to not incur the costs of their actions (i.e., they expect to be forgiven). This realization supports the point that prosecuting acts of injustice is beneficial, but only up to a point.

Yet another reason for pursuing some level of justice relates to the problem of legitimacy and the emotional issues associated with the breaking from the past. Unless those who view themselves as victims of the previous regime are emotionally satisfied that the new regime will address the past injustices, they will most likely not view the new regime with the legitimacy it requires. The formal rules of politics and law must be

grounded in the informal rules that govern social intercourse. To the extent the formal rules are divorced from the informal rules, the enforcement costs of those rules rise accordingly --- to a point where a complete disjoint between the formal and informal will lead to prohibitive enforcement costs, and where a complete dovetailing of the formal and informal will lead to low to non-existent enforcement costs. Our conjecture is that the legitimacy of any regime rests in the tight proximity between the formal and informal.

Conclusion: Mechanisms for Reconciliation

“We are not them,” was a theme often heard in 1989 as the new regimes took control of the governmental machine. Classic literature, such as *The History of the Peloponnesian War*, warns us that revenge is the end of political community and with it justice. One should expect issues associated with transitional justice to remain at the forefront of transition attempts in the future. Perhaps nothing highlights this more than the current efforts to transform Afghanistan and Iraq into liberal democratic orders. As of this writing, the public trial of former Iraqi leader Saddam Hussein is taking place. We have already noted the issues associated with pursuing justice against former members of the Baath party as part of the Iraqi reconstruction. These cases, as well as future attempts at justice, will influence the ultimate outcome in Iraq.

One of our central contentions in this paper is that reconciling around an ethic of forgiveness and acceptance is more important than monetary retribution for the establishment of a sustaining liberal order. Principles for the treatment of one’s former enemies must emerge that simultaneously balance retribution, vengeance, reconciliation and the opportunity to move forward and benefit from a new regime. Only by

establishing such an ethic can citizens move on and secure the potential gains of peaceful social and economic interaction and exchange. How is this to be accomplished?

As we have discussed, a key part of life under totalitarian regimes was living a lie. In other words, individuals were required, for survival purposes, to silence their personal preference and publicly support the regime. As the economist Timur Kuran has emphasized, a political and social environment that fosters preference falsification typically stifles public discourse because public discourse is a means of discussing alternatives to the status quo. As such, public discourse is a key means of becoming aware of alternative forms of organizing society whether they cultural, religious, political or economic. In the absence of public discourse, a society will remain trapped in the status quo and citizens will remain unaware of the means of dealing and moving forward.

What this indicates is that a central focus of any transition must be on determining mechanisms which increase public discourse. Indeed, if the aim is the establishment of a new regime, fostering public discourse may be more important than seeking retribution given the potential for generating an ethic of reconciliation. Retribution may be a factor in reconciliation but it is unclear that it can, by itself, establish the required ethic to move forward. One means of achieving this is protecting freedom of speech and individual rights as well as creating an environment where a free media can develop. Further, technologies such as the Internet, cell phones and satellite television, which are increasing in availability at decreasing costs, provide another means of foster public discourse not just within border also across borders.

The effectiveness of public discourse for shifting the ethic of a society will be constrained by the specifics of the society in question. These include, among other

factors, historical experiences, existing knowledge of alternative organizational forms as well as endowment of social capital or the 'connectedness' of individuals. If anything, these factors will influence the time it takes for the evolution of a new ethic that allows transitional societies to move forward.

The overarching theme is that focus must be on the possibilities of the future as compared to remedying the past. The pursuit of justice and reconciliation are beneficial only to the extent that they contribute to the future of the new order. Beyond that, the pursuit of justice will bankrupt the future of the system of cooperation and production and the ability of citizens to break from the past.

Suggested Further Reading

Boettke, P. 1993. *Why Perestroika Failed: The Politics and Economics of Socialist Transformation*. New York: Routledge.

Cowen, T. 2006. "How Far Back Should We Go?: Why Restitution Should Be Small," in Jon Elster, ed., *Retribution and Reparation in the Transition to Democracy*. New York: Cambridge University Press.

Elster, J. 2004. *Closing the Books: Transitional Justice in Historical Perspective*. New York: Cambridge University Press.

Kritz, N.J. (Ed.) 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, D.C.: United States Institute of Peace Press.

Tebble, A. 2001. "The Tables Turned: Wilt Chamberlain versus Robert Nozick on Rectification," *Economics and Philosophy*, 17(1): 89-108.

Teitel, R.G. 2000. *Transitional Justice*. New York: Oxford University Press.