



Research Article

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Transitional Justice as a tool for polarization in Albania

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Abstract

The discourse on transitional justice and coming to terms with the past following 32 years of regime change in post-communist Albania continues to cause further polarization within society. The timeline of nearly thirty years has been fueled by extreme debates and harsh statements which have resulted in the division of society in two camps of public judgment—the communists and the anti-communists. The number of studies conducted on the impact of transitional justice on democratic backsliding is quite limited, and similarly, there is a paucity of research on the correlation between transitional justice and polarization within the country. Albania's transitional justice dynamic can be better understood by contextualizing it in terms of regime change and consolidation, which would bring significant insights. The primary objective of this paper is to concentrate on the theoretical and conceptual framework of transitional justice, and to discuss its primary differences in how it deals with the past. In the second part of the paper, a detailed analysis of the discourse of the elite will be presented, aimed at addressing the fundamental question posed in this paper, which is "to what extent has the political domain utilized TJ to polarize society"?

Keywords: transitional justice, Albania, polarization, post-communism in Albania, lustration.

1. Introduction

For justice to be achieved, the political landscape must embrace concepts such as willingness, a strong national conscience, and the recognition that prioritizing the truth is essential to any political agenda. A society's sustained development and democratization can be achieved through the prioritization of justice. Albania, being a post-communist country, requires a firm commitment to deliver much-needed justice in order to heal the wounds of society and maintain strong social cohesion and co-existence, which makes this an important issue. Since the fall of communism in

Albania, the politicians have taken inadequate initiatives and steps towards addressing the essential issues of transitional justice. Among the insufficient initiatives that have been implemented, there are the Lustration Law and financial compensation to the victims, which have not been able to fully address the issue. It is imperative that we prioritize justice by both acknowledging the truth and taking active steps to address the past in a timely manner, despite the fact that this mechanism is often highly politicized and questioned for its political motivations.

The subject of transitional justice in Albania has not been extensively studied, especially when it comes to financial reparations and lustration. Prior studies have not delved into the relationship or any possible link between transitional justice and the polarization that exists within society. Polarization within groups of interest and society has been aided by the poor advancement of transitional justice agenda in the country and/or early initiatives and reforms approved in the 1990s. 1. When it comes to the transitional justice process in Albania and its correlation with the rates of polarization in the country, there are a number of pressing issues that need to be considered. These include cases related to property rights, the opening of files, and the provision of financial reparations to former political prisoners. In order to provide a background, it is important to note that the most recent public debate which surfaced a multitude of political and personal accusations happened to be between the ex-President of Albania, Mr. Ilir Meta, and the Albanian State Authority, specifically regarding information pertaining to the Documents of the former Sigurimi (AIDSSH). Accusing the State Authority of political blackmail, the former Albanian President, Mr. Meta, filed a criminal complaint against them on September 1st, 2022. He also made allegations against the Prime Minister of Albania, Mr. Rama, in the complaint.

2. State of Art

United Nations through a Guidance Note of the Secretary-General defines transitional justice “as the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation “ (United Nations, 2010).

Apart from the concept of polarization, which is not much elaborated, Baden defines it as a process that leads to a unique pattern of political preferences and interpretations held by a population. According to Baden (2015), polarization can take place within a society or public sphere, which is referred to as internal polarization, or between distinct societies or public spheres.

While transitional justice can help reduce both internal and external polarization, it may also have the opposite effect by contributing to increased polarization within a country.

According to contemporary transitional justice scholars, research that focuses on the significance of politics and transitional institutions in addressing the past has gained support. However, these scholars have overlooked the importance of timing, contextualization, and public participation in promoting transformative approaches.

Scholars and practitioners in the field of human rights and peacebuilding have been motivated by the pursuit of justice in a region that is divided, leading them to put the definition of transitional justice into the appropriate context.

It is likely that the concept of Transitional Justice may not be fully articulated by political and judicial actors in Albania. The literature on Transitional Justice (“TJ”) highlights the fact that the approach to transition strategy changes with both norms and practices, and it is crucial to contextualize the timing of transitional justice norms as they are linked to the usage of TJ mechanisms and instruments that aim to achieve trust, peace, and democracy as its endpoint.

Preysing’s analysis of transitional justice encompasses its trajectory from a means to confront past human rights violations to its relevance in the complex political transitions of Eastern Europe and South America, where it played a critical role in facilitating the shift towards democracy. According to Preysing (2016), there are initiatives aimed at expanding and transforming the subject of “transitional justice” in accordance with the transition discourse of this discipline.

Several studies have been conducted and have demonstrated that the timing of transitional justice mechanisms significantly affects their efficacy and impact. Sharp (2018) argues that the application of transitional justice has no temporal constraints, as it can begin prior to the political transition and persist for many years following the democratization process, thereby questioning previous assumptions about the discipline’s short-term nature. In addition to the main focus of this study, it is worth noting that the diversity of contexts in which mechanisms to deal with the past are employed is also of great importance and relevance. These contexts can range from democratic to non-democratic regimes, as well as from transitional to non-transitional societies.

In one of his exhaustive publications, Sharp identifies a gap in the literature until 2018, which is the need to better understand how transitional justice mechanisms function in a range of contexts. These contexts include paradigmatic political transitions, normative and ideological transitions in merged democracies, and war-to-peace transitions that result in more autocratic outcomes than democratic ones. The problem of TJ was originally conceptualized as being defined by and dependent upon political quandaries that were transient. The primary focus was on identifying the ideal transitional mechanism to account for the past within a bounded interregnum between one government and another.

According to Arthur (2009), the understanding of TJ (Transitional Justice) as the process of transitioning to democracy in the late 1980s aligns with the implementation of various retributive and reparatory measures such as prosecutions, truth-telling, restitution, and reform of abusive state institutions, which are considered legitimate justice initiatives. The concept of transition in this context implies that it is just a phase of the change regime, and hence the period of transition won’t last long as a new government and new elite will take over soon.

The issue of justice delivery is currently a topic of intense scholarly discussion, with scholars divided over whether it should be dispensed from within or without the

“ordinary” justice sector. Consequently, this disagreement has led to an ongoing debate regarding the merits and demerits of judicial and extrajudicial methods of delivering justice.

The research conducted throughout these years has been widely agreed to lack some important features. In their 2013 publication, Arnould and Raimundo have conducted research and found that there are contradictory and inconclusive assumptions regarding the relationship between transitional justice and democracy. These findings have brought to light the importance of delving deeper into this area of study and conducting further research. It was further explained by them that despite the use of the same data collection and analysis method, studies still reach different conclusions because of differences in how they conceptualize key variables, codify and collect data, and specify their models.

There are different goals and outcomes that transitional justice may have, and these can vary from promoting the rule of law, facilitating state-building processes, fostering democratization, supporting development efforts, and contributing to peacebuilding efforts. The majority of literature that exists places emphasis on how political actors are willing to enhance or put forward these processes. In addition to the aforementioned statement, Skaar et al (2016) also recognized the ICTY’s acknowledgement of four significant contextual factors which are the institutional context, the nature of conflict and violence, the political context, and underlying economic and social structural problems as highlighted by Duthie (2017). The ICTY has made available some fundamental guidelines to follow when approaching or designing a mechanism for transitional justice intervention.

The question of whether Transitional Justice is a leading norm or a leading space for political gains is complex and requires multiple answers to fully understand it. In order to establish a new policy and legal order, it is crucial to maintain a balance at the core. Dealing with the past requires a space filled with time, but unfortunately, Albania has not invested politically or socially in creating such a space. Transitional justice has been overlooked in the transitional political agendas by putting off or rejecting the primary national issue that requires attention. Simultaneously, while maintaining archives of historical records, they utilize them as personal leverage to extort and intimidate one another. The question being raised pertains to the political power held by citizens to hold both former and current political class accountable, as well as their responsibility in the context of the political agenda. The process of transition is not limited to a single event, rather, it requires the ongoing and active participation of all citizens in the democratic process. This process involves a wide range of moral commitments that are necessary for politicians to capitalize on, such as a good willingness for cooperation and responsible leadership.

A study on a new agenda for practice was conducted by scholars such as Gready and Robins (2014), and their findings suggest that a transitional approach is being transformed into a transformative one. The comprehension that they have regarding the issue has led them to come up with an agenda that provides an alternative approach to deal with state fragility, conflict, and security. Transformative situations

are distinguished by the emphasis placed on local agencies and resources, which in turn prioritizes the process and avoids dismissing transitional justice. The main aim is to reform its politics, priorities, and locus. In the study that they conducted, certain limitations were identified that relate to transitional justice.

The book titled "Building Trust and Democracy" written by Cynthia Michalski Horne puts emphasis on the Albanian case and the lustration laws. According to Horne's research conducted in 2017, one of the key findings is that if a lustration program were to be implemented, it would have a significant impact on all sectors of society, given the complicity of the population in both the party and the State security apparatuses.

The implementation and prioritized goals of transitional justice are significantly influenced by the interpretation of law and policy levels, as argued by McAuliffe (2013). In numerous settings, transitional justice and the restoration of the rule of law have emerged as popular concepts simultaneously. The fact that there is a concurrent increase in both rule of law reconstruction and TJ strengthens our belief that these processes are interconnected and reinforces our suspicions.

According to Elezi's (2017) explanation, polarization is the result of the absence of a culture that values compromise. All things considered, the post-communist period struggled greatly with comprehending and executing the ideals of compromise and consensus, to varying extents. In the period of communism, oppositional perspectives were never tolerated and were considered a significant threat.

The author argues that the fall of Albanian totalitarianism resulted in numerous impediments to the rule of law, which is unlike the experience of other authoritarian regimes in Central Europe that underwent transition. He maintains that the politicization of the judicial system in Albania, which was meant to serve the party state's interests, hampered the progress of democracy following the fall of totalitarianism. The establishment of the rule of law has been challenged due to the intermingling of public and private life and the excessive personalization of power, as noted in Elezi's 2017 study.

3. Transitional Justice in correlation with polarization

In order to understand the myths that surround communism and the post-regime era, it is essential to deconstruct them and examine how they were used as a tool to legitimize the systems of symbolic world-maintenance. Both communism and democracy employ a similar strategy of acquiring political power by means of an "ideology in narrative form". Scholars maintain that the myth propagated by Soviet power in the wake of World War II was that of a "transition to communism", while the fact that "transition to democracy" is now seen as the "only game in town" highlights the continued emphasis on the dominant social identity of 'West' democracy.

The Albanian transition paradox, which involves the concept of democracy without democrats, is a significant part of the national puzzle that is related to the unfinished transition to democracy. In the realm of politics, the ongoing discourse has effectively

imposed divergent narratives on particular issues that hold immense significance not just for a select group of individuals but for the entire society as a whole.

The myth of communism practices power is a subject of interest in the post-communist era, especially in relation to the myths surrounding democracy waves and European integration. The de-contextualization of transitional mechanisms, as well as the application of a “one size-fits-all” approach, along with the necessity for a political regime after 1989 to produce another discourse and story-telling narrative, have had a significant impact on the state of mind during the thirty years of party’s pluralism in Albania.

The unorthodox communist regime in Albania, which is commonly recognized for its impact on the leadership approach and the entire legal and institutional system in the country, has had an excessively enduring effect. In 2010, the Constitutional Court made a ruling that found the previous lustration law unconstitutional. As a result of this ruling, the governing Socialist Party was prompted to reject the last attempt to reintroduce lustration legislation, citing that it lacked sufficient distinctiveness.

There are two different interpretations that can be made regarding the unsuccessful reintroduction of lustration legislation. One of the interpretations is that the previous lustration law had been misused by political parties, which had made it highly politicized. Since the early days of a pluralist regime, Albania has lacked a transitional justice force that could bring an alternative narrative to politics - one that emphasizes unity, national reconciliation, and the culture of compromise. This is a second interpretation of the failure. Frashëri (2011) highlights the significance of studying Albania’s case due to its intricacies and the ongoing “experiments” aimed at reforming various aspects of the country such as the political landscape, economy, society, and legal system, which sets it apart from other post-communist nations.

Since the fall of communism, Albania has not been successful in taking effective initiatives and political steps to address core transitional justice issues. The Lustration Law and financial compensation to the victims are two examples of insufficient initiatives that have been implemented. Although the mechanism is politically motivated, it is imperative that they address the past in a timely manner.

Lavinia Stan has identified ten myths regarding the discourse of communism and transitional justice, but three of them are particularly pertinent to the case of Albania. Conversations and debates were more focused on the post-communist political divisions within and between the government and opposition, rather than on the idea of political justice and uncovering facts regarding the communist past. This myth is known as *‘Political Justice is Political Vendetta’* and is a popular topic of conversation. The followers of the former communist parties have strongly argued against transitional justice, stating that the rights of former communist officials and agents should be firmly protected if the goal is to strengthen democracy. For the pro-democratic opposition, the real test was to accept not only the rights of their allies, the communist-era political prisoners, but to recognize also the rights of their political adversaries, the former communist-era officials and spies. The second myth is *‘Justice is Unnecessary’*. Many commentators have argued that revealing the

identities of those who handled past wrongdoings is unnecessary, as the perpetrators have already experienced the repercussions of a guilty conscience and atoned for it every day. Although the most frequent response to being exposed or made to account for one's actions was usually to deny the accusations, not to apologize for them, this outlook overlooks this reality. The vast majority of those who were labeled as informers denied the accusations made against them and took legal action against those who had slandered them, even when irrefutable proof showed that the claims made against them were true. The last one is *'Justice is about assigning blame'*. There has often been a negative connotation when discussing the legitimacy of transitional justice through debates. Some viewed the concept of transitional justice as a way not only to assign blame, but to provide individuals accused of wrongdoing with a platform to explain their side of potentially controversial and divisive stories and clear their names (Stan, 2006).

In this particular context, there is a concern that flows through the discussion, and that is the question of legitimacy and accountability. Albania is facing several challenges that have led to the erosion of legitimacy in the country. These challenges include political discourse that is divisive and polarizing, political boycotts that undermine the democratic process, the non-recognition of elections, and the fragility of institutions. In addition, massive waves of emigration have contributed to brain drain and weakened the country's economic and social fabric. Furthermore, tendencies, actions, and initiatives that enforce authoritarian attitudes have contributed to a culture of fear and mistrust. This, in turn, has led to regional instability and inconsistent policies that are sometimes not in line with the national interests of Albania. Transitioning to where? Despite thirty years passing since the fall of communism, there is still a questionable process of reforming institutions and bringing unity in the society. The transitioning path of democracy should not be taken for granted, as it requires a strong commitment, willingness, functioning political parties, and leadership. We often speculate about transition in our environment and addressed as the finish of a glorious marathon. Meanwhile, transitional mechanisms are part of a process that occurs even in most developed countries, because defending and protecting human rights, holding perpetrators accountable for their atrocities or violations is a continuous reality that strengthens and performs with the mindset of social reconstruction.

The Albanian government, in a historical context, resorted to labeling certain people and organizations as "enemies of the people" and punishing not only them but also their descendants. As a result, people were segregated based on their social background by the rhetoric of the class enemy, which labeled them as either having a 'positive' or 'negative' biography (Godole, 2023). The transfer of nationalized or collectivized land to private ownership was made mandatory by the passing of Law No 7501 on 31 July 1991. The decision was made that the land would not revert back to its previous owners, but instead, it would be divided among the peasant families residing there based on the size of each family (Godole, 2023).

The categorization of people with "negative histories," based on the social-political

lineage of their family, and the subsequent division of society had a significant impact on the process of confronting the past. While other communist countries in the post-Stalin era engaged in persecution of political dissidents, violent rhetoric, and surveillance, these methods of repression went far beyond what was practiced elsewhere (Idrizi, 2021).

To gain insight into the causes of polarization, scholars have historically analyzed three potential explanations: economic, institutional, and cultural (Bertoa & Rama, 2021).

Albania's turbulent and often violent shift from a communist state created a fierce long-term battle between two opposing political-ideological sides, ex-communists and those against communism, which became a hindrance to post-communist democratization (Elbasani, 2019). The accompanying effects of weak institutions and their resulting patronage networks have impeded the system from having a peaceful institutional approach to conflict resolution. These establishments that are managed by political patronage networks facilitate and strengthen the pattern of an unbalanced democracy, making it prone to crisis and collapse (Elbasani, 2019).

4. Conclusions

The neglect of political responsibility over the past thirty years has stunted the advancement of discourse and discouraged the implementation of lustration or any other transitional justice system. Despite their efforts, the democracy promoters have not given enough attention to the socio-economic conditions of countries and the aggressive nature of politics, which has resulted in a disregard for the unfinished process of confronting the past. There is a regional context that during a period of years have had its own waves of conflicts, ethnics disputes, power-sharing agreements, peace-building missions, state-building projects but in particular a regional context that has its own "white spots of history or denials of what happened in the past always serve as feeding grounds for myths and speculations.

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