Re-establishing Human Rights Regimes in Transitional Justice: The Case of Minority Rights in the Former Yugoslavia Post-1993

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In the pursuit of building peace, post-conflict societies engage in transitional justice and memory-work in order to redress legacies of human rights abuses, expose truth, bring perpetrators to justice, and honor victims. Particularly for areas rebuilding after ethnic conflict, the process of reconciliation is long and arduous: in the pursuit of justice, overzealousness and vilification of the perpetrating groups can often refuel tensions and prevent long-lasting peace. This paper will explore human rights regimes during periods of transitional justice, ultimately arguing that while justice is a necessary mechanism for confronting human rights violations, the process results in minority rights being often ignored in favor of protecting majority groups. To do so, this paper will focus on the case study of Yugoslavia, one of the first cases of conflict that used techniques of transitional justice for remediation. Additionally, as one of the earliest cases yet still within the last few decades, the case of Yugoslavia allows for ample comparisons as to the effects of transitional justice on human rights, with justice efforts already having concluded and having shaped civil and social society in the region. Furthermore, this paper will give special focus to the treatment of the Roma people in the region of the former Yugoslavia. As a traditionally disadvantaged group, the case of the Roma people particularly identifies the lack of protections for minority groups during the re-establishment of human rights in the former Yugoslavia, having consistently faced some of the most concrete and stark violations of human rights.
**Transitional Justice: Past and Present**

In seeking resolution after periods of human rights abuses, actors must find vehicles of progress and solutions that acknowledge the atrocities and find justice for victims while ensuring fairness and reconciliation. In the modern human rights regime, the institution of transitional justice has become key in achieving those aims. In theory, it is understood as:

- a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation and democracy.

Transitional Justice is not a special kind of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. Rather than encourage a historical amnesia of the atrocities, transitional justice is centered around collective remembrance. Doing so is intended to prevent unaddressed wrongs from fueling later conflict and creating cycles of unresolved human rights abuses. In practice, the mechanisms of transitional justice can include—though is not limited to—truth commissions, trials, nation building, commemoration, reparations, reburial of victims, public memorials, and access to police files.

The Nuremberg Trials are a symbolic start to transitional justice. Rather than punish Germany as a whole for the crimes of World War 2, those that oversaw the post-war transition opted for individual accountability. Prosecuting offered the opportunity to establish trust and to educate. Overall, the trials were successful: bringing many to justice without thrusting the entire country into a state of blame. As a model of justice, however, the Nuremberg Trials were

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2 Ibid.
not replicated during the Cold War era, yet would prove a precedent in the future.

Inspired by the Nuremberg Trials, intergovernmental organizations and human rights groups sought in the 1990s to re-establish tribunals in response to human rights abuses in the former Yugoslavia and Rwanda. These “Ad Hoc” tribunals were established in 1993 and 1995, respectfully, and were critical in creating a norm of “international justice intervention.” While the purpose of putting offenders on trial was not necessarily contested, these tribunals were criticized and viewed as inherently problematic. It was not the expectation in the international community for creating such a tribunal—rather, it was an exception. This opened the tribunals to accusations of serving political interests, of being too limited in nature, and not being capable of building proper social support for affected populations.

In response to these criticisms and the viewed successes of prosecuting human rights abusers in international trials, the international community created the International Criminal Court in 1998 under the Rome Statue. With its opening in 2002, the ICC established an international criminal justice mechanism, allowing condemnation of abuses through a permanent institution. This additionally allowed for increased social support for victims, including a reparations fund. While domestic courts still are crucial in prosecuting human rights abuses, the International Criminal Court allowed for an internationally recognized safety-net that ensured atrocities will be prosecuted.

From the Nuremberg Trials to the Ad Hoc Tribunals of Yugoslavia and Rwanda to finally

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3 Ibid.
4 Ibid.
5 Ibid.
6 Ibid.
the International Criminal Court, transitional justice was not only established but became an expectation in the international community. Prosecuting individuals, while establishing truth and remembrance for victims, is now a widespread norm in human rights. Whole countries and societies are encouraged in this process to move from conflict towards peace and democracy, with the hope that transitional justice ultimately puts to bed cycles of human rights abuses for good.

**Transitional Justice in the Former Yugoslavia**

While the Nuremburg Trials may have be the beginning of the notions of transitional justice, the former Yugoslavia was largely a test-case, seeing if the success of the Nuremburg Trials could be replicated decades later and in different contexts. As the first international tribunal after Nuremburg, the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) was revolutionary in redefining how human rights atrocities should be dealt with.

As a federation of six republics united after World War 2, Yugoslavia was the radical experiment of creating a multi-ethnic, multi-religious state. Under leader Josip Broz Tito, ethnic tensions were effectively suppressed and many lived in minority-majority areas. In the post-Tito power vacuum and the upheaval across Eastern Europe in the 1980s and 1990s, however, Yugoslavia experienced a resurgence of nationalism, ultimately leading to Slovenia and Croatia declaring independence in 1991. The resulting spiral into conflict saw retaliation for independence by the Serb-dominated Yugoslav Army, a three-sided conflict in Bosnia and Herzegovina between Croats and Serbs and Bosnians, and NATO bombing of the region. Peace ultimately came in 1995 through the Dayton Accords, though a reprisal of conflict arose in 1999
when ethnic-Albanians in Kosovo broke off of Serbia.

The wars in Yugoslavia devastated the region, physically splitting up the federation by ethnic divides. Ultimately, over 100,000 were killed and 2 million had to flee their homes—over half the population. The human rights abuses committed by all sides affected thousands through torture, rape, detention camps, and genocide, including the notable Srebrenica Massacre that left 8,000 Bosnian boys and men dead over just a few days. The human rights implications were immense—Europe and the United Nations were confronted with atrocities in their backyard that had a very real potential to re-escalate if ethnic tensions were not addressed.

In response to what was just the beginnings of the conflict, the United Nations sought to create the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993—the first created by the UN and the first since the post-WW2 period. Through a large organizational body of prosecutors, investigators, and community outreach members, the events of the breakdown of Yugoslavia were put under a microscope. While a majority of investigations focused on Serbs and Bosnian Serbs, individuals from all ethnic backgrounds were investigated and prosecuted. In its 24-year existence, over 160 individuals were charged for crimes occurring during the period from 1991 to 2001, among those sitting Serbian president Slobodan Milosevic. Apart from ensuring justice for crimes against humanity, the ICTY was critical in collecting and preserving evidence, much of which was unlikely to have otherwise been brought to light. In doing-so, the ICTY effectively fulfilled what it sought out to do: individualize guilt,

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8 Ibid.
bring justice, and indisputably recognize the crimes which occurred.

Transitional justice, particularly in how it is understood today, is grander than simply justice through the judicial process. Further attempts for reconciliation and justice were made in the former Yugoslavia, albeit often unsuccessfully. No government has formally set up a transparent system of reparations nor truth commissions nor lustration (removal of secret police collaborators from political power). In one semi-successful case, a human rights court in Bosnia and Herzegovina did order reparations for victims of the Srebrenica Massacre, though in the form of collective payments to a foundation.9 Victims have subsequently rejected those reparations in favor of advocating for individual ones. The international community, while establishing the ICTY, failed to initiate any of these additional mechanisms of transitional justice. Civil society in these nations have been unable to step in to facilitate these efforts themselves, attributed to civil society’s lacking in number of organizations and still often being split along ethnic lines.10 Despite negligence to fully provide transitional justice other than through the judicial system, there has been success in symbolic acts. Public signs of responsibility and remorse have been offered by the presidents of Serbia & Montenegro, Croatia, and Bosnia & Herzegovina, with general support and appreciation for such acts across the populace.11 Given the Balkans was largely the first case for transitional justice, it is not surprising that all aspects—as understood today—were not implemented from the beginning. The continued lack, however, of these mechanisms still signals some failure by those involved in

11 Ibid.
the transitional justice process.

The barebones success of transitional justice is indisputable: bloody conflict has not restarted in the region. It gives credence to the belief that transitional justice is a better mechanism than historical amnesia in preventing further conflict. Yet, digging deeper, the successes of this human rights institution are marred by the perceptions in the region. In general, the Serbian and Croatian communities have come to despise the ICTY, seeing the institution as targeting those ethnicities. A narrative of victimhood at the hands of the international judicial system was easy to build, particularly in Serbia where the Milosevic regime (which architected parts of the conflict) was still in power until 2000.\textsuperscript{12} Nationalism still flavors much of the national dialogue, including when it came to conflict resolution efforts. The Bosnian Muslim community was more welcoming towards the ICTY, which represented their best chance for justice and truth. Perceptions, however, became mixed—with some disappointed in ICTY outcomes (such as sentencing) and others unhappy that Bosnian war crimes were still going to be investigated.\textsuperscript{13} Overall, the legacy of the transitional justice (specifically the ICTY) is complicated to even negative in the region, no matter the ethnic group.

Apart from the role that nationalism still plays in coloring those perceptions, how transitional justice was structured and encouraged furthered the mixed legacy within the former Yugoslavia. As detailed above, other forms of transitional justice were largely lacking and non-existent. These other mechanisms are also ones that are generally community-facing and would affect citizens directly. The ICTY’s trials were distant, in a foreign country. The legal


\textsuperscript{13} Ibid.
proceedings were long, boring, and complex—definitely not show trials. Consequently, it was
difficult for the average person to grasp the functioning of the ICTY or the cases that were
ongoing.¹⁴ As an impersonal and elitist institution, the ICTY was structured so as to be
unfamiliar to most people, thus making it easy for misperceptions and misunderstandings.
Furthermore, engagement with the ICTY was often coerced by the international community.
Both Croatia and Serbia were mandated to cooperate with the ICTY by the U.S. and Europe, in
exchange for aid packages, European integration, and removal of economic sanctions.¹⁵ The
idea that the ICTY was a Western organization trying to control outcomes was furthered by this
forced cooperation, making the rhetoric around the trials even more subject to nationalism and
skepticism. Overall, the structure and how engagement was encouraged left the ICTY
vulnerable to ill perceptions that have colored how transitional justice is seen today.

Human Rights in the Balkans: Tracing Rights Evolution

Understanding human rights in the Balkans has historically been heavily influence by the
rights regime of Yugoslavia, particularly in its noteworthy attention for the issue of minority
issues. The Yugoslav model, as with other socialist countries across Europe, praised equality and
unity as workers, enshrining these values into sacred national law.¹⁶ As an incredibly diverse
country of multiple ethnic groups, minority rights were of special concern. To prevent ethnic
tensions, the Yugoslav government needed to acknowledge all ethnic groups equally, without
giving reason for claims of favoritism or repression. That, however, did sometimes include

¹⁴ Ibid.
¹⁵ Ibid.
censorship of extremist views. That concern for balance was strongly warranted—much of censored speech of ethnic nationalists was closely linked to the rhetoric of 1930s European fascism.\textsuperscript{17} Indeed, when international pressure led to the decensoring in the 1980s, ultranationalistic views began to flourish, turning into the basis for the 1990s Yugoslav wars.

Apart from this lack of absolute rights for freedom of speech, minority rights were carefully considered in law. The Yugoslav constitution gave special protection for minorities, namely the right to language and culture.\textsuperscript{18} One unique aspect of this was that a right to language extended to a right to receive education in one’s mother tongue. While difficult to implement for tiny minority groups, it did show the strong desire to protect ethnic minorities. Yugoslavia ultimately became an international leader on the issue of minority ethnic rights. At U.N. conventions and covenants, including that for the U.N. Declaration of Human Rights, Yugoslavia consistently sponsored motions to give explicit protections to minority groups. \textsuperscript{19} Despite being a failed state, the legacy of human rights for Yugoslavia will be remembered for its strong focus for ethnic groups, majority or minority.

In the post-Yugoslav space, the newly formed countries were facing not only conflict and peace-seeking but also nation-building: the decision of forming new governments and politics. In that discussion was one of human rights, particularly in how to differ from Yugoslavia. Firstly, protections for minorities were largely erased, in favor of prioritizing the language and culture


\textsuperscript{19} Ibid.
for the majority ethnic group of any given nation.\textsuperscript{20} Given the nationalism rampant in creating and perpetrating the conflict, this is no surprise. Further, women were largely excluded from the nation-building process, such as Bosnia and Herzegovina having no woman among their political envoy to the conflict-ending Dayton Accords.\textsuperscript{21} Without a place at the table at the birth of the post-Yugoslav nations, women have consistently struggled to participate in the political process and in achieving rights. Gender equality remains poor in the region, with high levels of violence against women.\textsuperscript{22} Between poor protections for ethnic minorities and women, the human rights of the Balkans was immediately distinctly different from that of Yugoslavia.

Further exploration of the state of rights today in the former Yugoslavia illustrate a litany of shortcomings. Journalists and non-profits risk strong censorship and government interference.\textsuperscript{23} Discrimination against LGBT persons is well-documented. In continuation of the anxieties over ethnic minorities, poor conditions are common for asylum seekers and migrants. Many are unable to even enter Serbia, let alone apply for asylum in a back-logged system with low acceptance rates.\textsuperscript{24} Overall, worrisome human rights practices are found in a number of issues in all countries in the region.

**Human Rights for the Roma People**

While the status quo for human rights is problematic in general, the case of the Roma people is particularly of concern given their widespread and historic discrimination. The Roma

\textsuperscript{20} Sardelić, Julija. “Romani Subaltern in the Context of Transforming Post-Yugoslav Citizenship Regimes.” CITSEE. September 2013.


\textsuperscript{22} Ibid.


\textsuperscript{24} Ibid.
(alternatively known as Romani or Romany) are the largest ethnic minority across Europe, with over 10 million people, yet has systematically suffered from human rights abuses in all times and locations. Yugoslavia had a significant population, with over 165,000 across all federations in the last Yugoslav census of 1981. Under the system of ethnic equality and minority protections, the Roma people were relatively better-off than they normally are. For example, in the federation of Macedonia, despite being only 2.3% of the population, the Roma had notable representations in both the media and in legislative assemblies. Freedom of movement across the larger Yugoslav country further benefited the Roma. The freer borders were taken advantage of by the Roma, who were constantly mobile in seeking optimal economic opportunities. In comparison to much of Europe—past or present—the Roma enjoyed unparalleled human rights because of the Yugoslav commitment to ethnic minorities.

There were, however, still shortcomings for Yugoslavia in addressing the Roma people. They were indeed acknowledged as an ethnic group, yet that did not translate to the Roma being a nationality or a nation given lack of a dedicated homeland. Entities such as the Croats were simultaneously recognized as ethnic groups and as a nation, given there was a federation in which that ethnic group was the majority. The notions of nation-states, with an ethnic group’s concrete ties to the land, were still honored despite the Yugoslav government’s focus on a Yugoslav country first and foremost. This was particularly ironic given territorial claims in

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26 Ibid.
the region were notoriously complicated: some were rooted in ancient history while others were based simply on being the major ethnic group in a given area.\textsuperscript{29} The Roma were thus relegated to an informal—and unintentional—secondary status: one where they accessed equality as an ethnic group but were not achieving the same political recognition as the Yugoslav nations.

That difference, no matter how minor or inconsequential it appeared during the years of Yugoslavia, was weaponized during the conflict and in the years after. War sent the Roma fleeing their homes, like so many others in the region. As internally displaced persons and refugees, however, the Roma lacked a homeland or nation in which they could seek refuge. The Roma had become truly stateless. After the conflict, the nationalistic movements that removed minority protections in many post-Yugoslav countries similarly opted to not consider the plight of the Roma when writing citizenship laws.\textsuperscript{30} Among requirements for citizenship were proof of permanent residency—which many Roma lacked due to historical mobility—and adoption of the majority language and culture—a barrier to those that enjoyed right to their mother tongue in Yugoslavia. With many without citizenship, the Roma lacked both in dedicated rights and protection and in political means to secure those rights. Without the right to access healthcare, like majority groups in the region had, many Roma mothers opted to give birth at home, consequently reducing the chance for their children to gain birth certificates through the hospital system.\textsuperscript{31} This phenomenon has created a cycle of intergenerational statelessness that

\begin{itemize}
\item \textsuperscript{30} Sardelić, Julija. “Romani Subaltern in the Context of Transforming Post-Yugoslav Citizenship Regimes.” \textit{CITSEE}. September 2013.
\item \textsuperscript{31} Ibid.
\end{itemize}
has ultimately prevented the Roma from escaping their human rights issues in the Balkans.

The condition for the Roma people today continues to be dire. The countries of the former Yugoslavia are signatories to the U.N. Convention on the Rights of the Child, which gives the right to healthcare, education, early childhood development, and living standards, among others. Yet, those rights are largely unrealized for the Roma. Lack of data on this population complicates understanding the big picture of the conditions, but information points to difficulties starting from birth. Upwards to 35% of Roma mothers are unable to produce a birth certificate for their child, even if they believe the registration process has happened.\(^{32}\) From there, health outcomes are similarly dire, with many women failing to access proper healthcare and Roma children being four times as likely to be stunted or underweight. Depending on country, only 47-91% of children will start primary school, with only 19-39% making it to secondary school.\(^{33}\) For those in the education system, discrimination is prevalent, even if without discriminatory intent. A large number of Roma children are funneled into special classrooms with reduced curriculum, influenced by their perceived educational difficulties on school exams insufficient for making that determination.\(^{34}\) Finally, the Roma in the former Yugoslavia have a 95% unemployment rate, compounding poor living standards and outcomes.\(^{35}\) The statelessness of the Roma in the former Yugoslavia has prevented fulfillment of rights that are normally standard across the region and Europe as a whole. The current day conditions of the Roma reflect that travesty, unfortunately continuing that cycle of

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\(^{32}\) “Realizing the Rights of Roma Children and Women: In Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia.” *UNICEF.* 2014.

\(^{33}\) Ibid.


statelessness.

Discussion

The situation of the Roma alone has attracted attention as it is a sore spot in Europe’s quest for human rights excellence. In the case of transitional justice, the Roma continue to be of critical importance. Evaluating the effects of the transitional justice is not only in the success of bringing perpetrators to justice; the lasting effects on the human rights system is critical in ensuring peace, prosperity, and a future free of conflict. The case of the Roma is of particular use in analyzing those claims: as a traditionally disadvantaged group, the Roma stands the most to gain from an improved system of human rights. As a minority group without a nation, they are truly at the mercy of states and ethnic majorities to recognize the necessity to properly protect their rights. Furthermore, the fact that the Roma had indeed experienced a betterment in rights protection under Yugoslavia shows a potential for protections in the post-Yugoslav space: there is not an inherent prejudice or bias that makes protections impossible. Thus, in the case study of Yugoslavia and transitional justice, the Roma people serve as a particularly important component.

In examining the transition of human rights for the Roma people in the former Yugoslavia, it is clear that there is an abject failure to protect their minority rights. The Roma became not only refugees but also stateless overnight during the Yugoslav conflict. The rights regime present in those countries today did not nor has not corrected that immediate failure, consequently perpetrating cycles of neglect and rights violations. Due to being ethnic minorities, this suggests that transitional justice did not go far enough in addressing nationalism. Nationalistic ethnic conflict encouraged nation-states to protect their own citizens
(their own nationals, as defined by ethnicity) first. Croats escaped to Croatia, Serbs to Serbia, Bosnians to Bosnia and Herzegovina, and so forth, with nowhere for the Roma to go.

Furthering this failure is how transitional justice led to nationalistic victimhood. The misunderstandings and misperceptions allowed for nationalists to decry the ICTY for targeting their respective ethnic groups: indeed the elitist and impersonal nature of the trials made such rhetoric possible. International coercion for participation in the ICTY could not have helped dispel such notions. A lack of community outreach and programing, such as through alternative methods of transitional justice like truth commissions and reparations, further isolated the efforts of the ICTY and fed nationalistic rhetoric. This ethnic nationalism maintained a stronghold in the region, meaning those initial shortcomings in protecting minority rights post-conflict continued.

Negligence in the transitional justice process can ultimately be at blame for the conditions and rights violations suffered by the Roma today. Of course, the historic disadvantages are likely to play a role, yet the demonstrated decrease in protections during the post-conflict period indicate that the peacebuilding process failed in some aspect. Retrospectively, the community side of transitional justice could have helped to prevent some of these oversights. Regardless of how better outcomes could have been achieved, the overwhelming indication is that transitional justice did not restore a proper human rights regime, or at least one that extended those rights to minority ethnic groups. Actors in the region must act so as to right these wrongs facing minority ethnic groups, particularly the Roma.

Conclusion
In the modern world of human rights, transitional justice is an institution of its own. In the post-conflict process, it does indeed fulfill its most basic goal: to stop and prevent conflict. The role of transitional justice after the Yugoslav wars, particularly through the employment of legal justice in the International Criminal Tribunal for the Former Yugoslavia, illustrated such an outcome. However, in returning post-war nations to full human rights, the Yugoslav case indicates a failure on part of transitional justice. While conflict has abated, nationalism has not. Minority ethnic groups, particularly the Roma, suffer human rights violations as a result. Nation-states aimed to protect their own nationals first and foremost. For future uses of transitional justice, Yugoslavia serves as a lesson and a reminder for the need to successfully combat nationalism, engage communities, and proactively reestablish human rights for future generations.