**Overcoming occupation in the Baltic states:**

**how much truth and justice has there been since 1989?“**

*Vello Pettai*

*Professor of Comparative Politics*

*Director, Institute of Government and Politics*

*University of Tartu*

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Ladies and gentlemen!

I would like to open this first section of more academic presentations at our conference with some reflections on how the Baltic states have attempted over the last 25 years to seek truth and justice in the wake of their Soviet and Nazi occupation periods. As we all know, the Baltic chain and the Baltic Way as a whole were very multifaceted phenomena. At its most immediate level, these mass movements were meant at the time to demonstrate to the Soviet Union that Estonia, Latvia and Lithuania wanted the re-establishment of their national independence on the basis of legal continuity or the fact that these nations had been illegally occupied and annexed by the USSR in 1940 following the Molotov-Ribbentrop Pact of 1939. The specific goal at the time was to put pressure on Mikhail Gorbachev and the Kremlin to acknowledge the legitimate right of the Baltic peoples to self-determination. More broadly, however, the Baltic Way was about ending and overcoming the Soviet communist regime. This overarching objective entailed not only complete political and economic transformation (through new constitutional arrangements, free market economic systems, etc), but also an eventual *Auseinandersetzung* or confrontation with the Soviet (and Nazi) past in terms of what actually happened, who suffered under the regime, and who was responsible. It also entailed a series of decisions about how to hold individuals accountable for their past wrongdoing and how to offer redress to those who suffered.

It is this meaning of “truth and justice” that I will examine here today, using certain analytical categories drawn from political science and the specific sub-field known as ‘transitional justice’. By looking systematically at different realms, where “dealing with the past” takes place, we can begin to compare nations and their varying practices since 1989, and where important differences arise, we can begin to ask, how much truth and justice has there been, why did one country go one way, and the other another way?

Having recently completed a book with my co-author, Eva-Clarita Pettai, on the topic of *Transitional and Retrospective Justice in the Baltic States* (Cambridge University Press, 2015), Eva-Clarita and I were both rather struck by the degree to which even the three Baltic states, once strongly bonded in their Baltic Way movement and often perceived as a single entity, have actually dealt with their occupation past in starkly different ways. To put it in a nutshell, Lithuania has pursued truth and justice much more vigorously than the other two Baltic states, and this concerns almost all of the analytical categories Eva-Clarita and I developed for our research. In this address, I will briefly outline these categories and give you examples of how the Lithuanian, Latvian and Estonian approaches to different aspects of truth and justice have varied.

It goes without saying that any kind of assessment of truth and justice goes together with a highly sensitive degree of normativity. Questions arise such as, are all aspects of truth and justice equally good? What is the “pursuit of truth and justice” supposed to bring? Does it actually produce such desired effects? Can it also have negative effects? How do we weigh these pros and cons? In my conclusion I will address also some of these issues.

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As a phenomenon, the pursuit of “truth and justice”goes as far back as the first ever transgression against other human beings. It is a very normal human process to want to understand the nature of a transgressionwhen it occursand to attempt to resolve the injustice that results. This is why one prominent scholar of ‘transitional justice’, Professor Jon Elster, has researched the topic from a spectacularly broad perspective, beginning with Ancient Greece, passing through the French Restoration (1814-1815) and ending with contemporary cases in Latin America and Eastern Europe.

A more familiar point of reference involves the Holocaust and the 1945-46 Nurnberg Trials. Here we have an illustration of both of the major parameters of transitional justice, namely prosecuting the perpetrators of human rights abuses and compensating/acknowledging victims of such injustice. In our study of transitional and retrospective justice in the Baltic states, Eva-Clarita and I adhered to this first analytical distinction, which is that policies aimed at establishing truth and justice can concern either of these two trajectories, or indeed both. In other words, one must look at what is done to punish perpetrators and what is done to support victims.

Yet, what kinds of actual measures or policies can be pursued vis-à-vis these respective groups? Analytically, it is worth distinguishing between three levels of measures: criminal-judicial, political-administrative, and symbolic-representational. The first looks at whether, for example, perpetrators of abuse are criminally investigated and judicially convicted. Equally, although perhaps counter-intuitively, the same applies to victims, in the sense that victims’ criminal records may be cleared after an instance of show-trial, false conviction or imprisonment.

A more varied level of truth and justice involves political-administrativemeasures. In this category one can look at political-administrative sanctions that are placed on members of the former regime, such as being barred from electoral office, civil service or perhaps even from certain private professions. Much of this domain is known as ‘lustration’. Likewise for victims, we can examine policies of political-administrative justice, such as the creation of legal categories of ‘repressed persons’ or ‘resistance fighters’ along with any range of social welfare benefits that such status may give entitlement to. Another broad-scale political-administrative policy aimed at supporting victims involves property restitution, for any kind of nationalization or forced confiscation of property is also a form of repression.

Lastly, we may examine symbolic-representational measures, whereby a new democratic state may adopt any number of declarations or organize events condemning the previous regime. It might also decide to make public the names of former regime operatives (thus bringing public disgrace upon them), but without any criminal or administrative sanctions being applied. Meanwhile for victims, recognition and commemoration are often very crucial symbolic-representational domains of truth and justice. The gamut of measures encompassed by this analytical category is very broad, ranging from remembrance days and commemorative campaigns to historical commissions and truth investigations. They are all, however, symbolic, since they are designed to bring emotional comfort to victims.[[1]](#footnote-2)

In sum, there are six analytical categories that can be used to map out a nation’s approach to truth and justice. If we were to imagine it as a matrix, there would be one column for perpetrators and one for victims, and three rows for criminal-judicial, political-administrative, and symbolic-representational.

However, in the Baltic states and in the post-communist region as a whole, it is important to distinguish still an additional dimension of the phenomenon, which is temporal or time-related. That is, while most of the study of ‘transitional justice’ over the last three decades has concerned actions taken vis-à-vis perpetrators and victims of crimes committed by the immediately deposed regime, there are also cases, where newly democratic societies begin working through truth and justice relating to repression that took place much longer ago in the past. To put it in simple terms, while the post-communist societies of Central and Eastern Europe had a great deal of truth and justice to work through in terms of what the regimes of Honecker, Griškevičius, Ceaucescu, Vaino or Zhivkov had done to them, they had also to examine what their Stalinist regimes had wrought during the 1940s by way of repression, imprisonment, killing and deportation. For these crimes, one can equally apply the six analytical categories I just outlined, with the difference simply that politically these kinds of measures tend to be less costly for politicians to adopt. In our analytical framework, we therefore talk about ‘retrospective’ justice alongside ‘transitional’ justice. However, for the purposes of keeping this presentation clear, I won’t go further into the details.

Rather, the striking landscape that emerges when comparing the three Baltic states across these analytical tools is that Lithuania far exceeds Latvia and Estonia in terms of truth and justice measures, and this across almost all of our analytical categories. To take the very first box in our matrix concerning criminal-judicial measures against perpetrators, all three Baltic states have begun criminal investigations and judicial proceedings against individuals alleged to have participated in the Stalinist deportations of the 1940s. Names like Vassili Riis, Arnold Meri Alfons Noviks, Kirilas Kurakinas will be familiar to many of you. However, a number of very significant differences are apparent. First, Lithuania has launched dozens of more investigations than the other two Baltic states combined. Second, it achieved many more convictions of such perpetrators (22 as opposed to 11 in EE and 7 in LV). Third, it has surprisingly focused much more on perpetrators of anti-partisan operations than it has on those involved with deportations of the civilian population. And lastly, it has generally had a much more liberal definition of what acts constitute ‘genocide’, including for example anti-partisan warfare by the NKVD (MGB). Needless to say, it is well-known that partisan activity lasted much longer and was more extensive in Lithuania than in Estonia or Latvia. But still, Lithuanian criminal legislation, political engagement and prosecutorial zeal has been much greater concerning criminal-judicial actions against perpetrators than elsewhere.

Similarly, we can distinguish Lithuania’s approach to the legal-judicial rehabilitation of victims from that of the other two Baltic states. Namely, Lithuania began in 1990 with a very broad-scale policy of rehabilitation, which soon brought controversy, when some rehabilitated individuals were accused of also having committed abuses under the Nazis. Legislation had subsequently to be changed and it took some years before all of these contested cases were reviewed. In Estonia and Latvia rehabilitation was also a major policy during 1990-1991, but with less polemic and discussion.

Turning next to political-administrative measures vis-à-vis former members of the regime, Estonia seemed initially to lead the Baltic states, when in 1991-1992 its Constitutional Assembly seriously considered a constitutional provision, whereby high-ranking members of the Estonian Communist Party and its sub-bodies would be banned from running for public office for up to 9 years. Had this measure passed, it would have propelled Estonia into the category of what some scholars have called ‘decommunization’ or the full-scale removal and banning of communist-era elite from the body politic. In the event, however, the proposal was scuttled and Estonia ended up with a rather symbolic type of measure known as the ‘oath of conscience’. Rather, it was again Lithuania that eventually adopted a pair of very robust ‘lustration’ laws in 1997, which banned for 10 years ex-KGB operatives from not only working in the public sector, but also from working in certain private professions such as security services, banking and law. Moreover, the law initially required both the state and private companies to fire immediately any such ex-KGB individuals working as employees at the time. The draconian nature of this legislation brought on considerable controversy, all the way up to the European Court of Human Rights, where these measures were eventually struck down. Still, the effort to cleanse the Lithuanian state from ex-regime figures was very extensive. Much more limited in effect was Estonia’s ‘oath of conscience’, which was simply anaffidavit by politicians and members of the civil service that they had never participated in the repression of other people during the Soviet and Nazi regimes. Moreover, Estonia’s separate effort to root out specifically KGB operatives was again more limited, since it required people to voluntarily report their KGB service, and if they did not, they could be ‘punished’ only by having their name symbolically released to the public. Finally, Latvia (as many of the people in this audience know), has not adopted any law requiring ex-KGB agents to register with state security authorities. Rather it has relied on examining the famous ‘Čekas maisiņi’ or KGB files that were confiscated in August 1991 (an opportunity Estonia and Lithuania did not have). This has led to repeated calls for the files to be opened wholesale, instead of being monitored only by the Center for the Documentation of the Consequences of Totalitarianism or TSDC. And a final decision to, indeed, open these files was reached just a few months ago, whereby the files will be made available after May 31, 2018. However, the point is that there has never been a formal ban on ex-KGB agents in politics apart from limited number of government posts and an electoral ban in cases where actual KGB collaboration has been proven by a court of law (and yet this has happened rarely).

Efforts to offer *victims* political-administrative compensation measures in the three Baltic states have seen again Lithuania take the lead in terms of welfare benefits for the repressed, but Estonia and Latvia have been far more extensive in terms of property restitution. For example, victim status laws are much broaderin Lithuania, outlining special categories for not only deportees, but also resistance fighters (partisans), people who were repressed during the later Khruschev and Brezhnev periods, and people hurt during the Soviet crackdowns in 1990 and 1991. Special housing programs were organized for returning deportees. Moreover, victim status can be accorded posthumously and very often benefits are extended to spouses and children. And all of this is organized by a special agency, the Resistance Participants Rights Commission (*Pasipriešinimo dalyvių (rezistentų) teisių komisija*). By contrast, in Estonia benefits for repressed persons (exclusively deportees) are generally treated as a kind of social welfare category and administrated merely by social welfare authorities. There is little political or societal solemnity added to the category as in Lithuania. Latvia falls somewhere in between, since while the country does recognize alongside deportees a limited number of members of the national resistance movement (*nacionālās pretošanās kustības dalībnieki*), it does not have a separate agency devoted to administering these specific programs.

At the same time, the one area, where Lithuania has not adopted very extensive compensatory measures is property restitution. Here Estonia and Latvia have adopted very liberal restitution policies, allowing individuals to claim back all kinds of property nationalized by the Soviets in 1940 or confiscated later during deportations. Over 240,000 claims had to be processed in Estonia alone by dozens and dozens of local government officials. Some 6,000 residential buildings were returned (roughly 2.6% of the housing stock) and roughly 1.7 million hectares of land. In Latvia, similar policies led to over 10,000 residential buildings being restituted (7.0% of the dwelling stock) and an untold amount of land. (Unfortunately official statistics on rural land are unavailable.) By contrast, Lithuania set relatively strict rules for the restitution of urban dwellings, and restituted owners were often required to sign agreements with local municipalities in order to take care of those people, who were otherwise living in these dwellings (i.e. forced renters). Hence, only 1,200 buildings were restituted amounting to a mere 0.7% of the housing stock. Land restitution was much more extensive, but also here many conditions were applied, such as requiring claimants to accept replacement land if the return of an original plot was no longer feasible for any reason.

Lastly, we come to the category of symbolic and representational measures, which in the case of perpetrators has involved a number of declarations and other actions aimed at thoroughly condemning the Soviet and Nazi regimes. Alongside statements declaring the Communist Party a criminal organization, the Latvian*Saeima*, for example, adopted in May 2005 a resolution on the crimes of the “totalitarian communist occupation regime” of the USSR in Latvia. The Estonian *Riigikogu* adopted a similar resolution in June 2002, and Lithuania has spoken about Soviet “genocide”. Historical commissions in all three states have attempted to reveal the names of people involved in the deportations and other repressive crimes, even if they are long since deceased. Here, Lithuania has also gone one step further by publishing on-line and indiscriminately the names of KGB agents from the 1940s and 1950s ([www.kgbveikla.lt](http://www.kgbveikla.lt)). All of these measures identify the nature and composition of the perpetrator regime, but impose essentially symbolic sanctions in the form of condemnation or public shaming.

Similar measures for victims involve (quite logically) annual commemorative ceremonies and remembrance days. Here we see again that Lithuania has many more such days, including one related to ‘civil resistance’ (arising from the self-immolation of Romas Kalanta in 1972). The Lithuanian government has also organized and allocated money for special year-long state commemorative programs related to past totalitarian repression. All of this, in turn, is often organized by the Lithuanian Genocide and Resistance Research Center (*Lietuvos gyventojų genocido ir rezistencijos tyrimo centras, LGGRTC*) or many of the dozen or so museums devoted to resistance or repression. The LGGRTC is also involved in recording memoirs from repressed people as well as compiling life stories and organizing youth meetings with deportees. As Dalia Kuodyte, a former director of the Center, told me, they have tried to model their activities on those of Yad Vashem, the Holocaust memorial institution in Israel. Nothing comparable to such an effort has been mounted in Estonia or Latvia, where some outreach activities are undertaken, but they are predominantly privately funded and thus cannot be counted to the same extent as the LGGRTC as state measures of recognition and remembrance)

As many of you know, all three Baltic states also established international historical commissions in 1998 to study the crimes of the Soviet and Nazi occupations. These bodies have done a great deal in terms of truth-telling, both in relation to perpetrators and victims. Their effect, however, has been mixed, with the Estonian commission producing a wealth of historical research, but mainly in English, while the Latvian commission has produced nearly 30 volumes of historical studies, butmostly in Latvian, and the Lithuanian commission has generated a number of truly collaborative international reports, and yet broke down after one of its members, the Israeli Holocaust survivor Yitzak Arad, resigned in 2007.

To sum up this broad landscape of truth and justice policies in the Baltic states, we may say five things.

1. All three Baltic states have concentrated on establishing truth and justice more often vis-à-vis Stalinist era crimes (what we call ‘retrospective justice’) than they have in relation to later Soviet repression. This stands in contrast to many of the other Central European countries (such as Poland or the Czech Republic), where transitional justice has focused on punishing immediate regime operatives (lustration) and acknowledging victims such as political prisoners from the 1960s, 70s and 80s. What this tells us about the Baltic states is that there has been a relative reluctance to deal with how the Balts themselves were involved in the Soviet regime. This is probably for two reasons. One is a kind of self-preservation instinct among small nations, meaning that opening up this kind of can of worms could be very divisive. Another is that because the Baltic states see themselves as having been illegally occupied by the Soviet Union, it is possible to see most of the Soviet regime as alien rule, which means that the Balts as such are mostly absolved from any sense of guilt or responsibility. It would seem there is no real past to ‘confront’.
2. Another conclusion to be drawn is that Lithuania’s more extensive pursuit of truth and justice measures is not by coincidence. Thanks to our analytical matrix, we see that this approach manifests itself in almost all of our analytical categories. This indicates, in turn, that there are certain overriding forces pushing for truth and justice measures across society. This is caused by what many people here know as the more ideologically divided Lithuanian party system. This was particularly the case during the 1990s, which pitted the Lithuanian Democratic Labor Party against the Homeland Union-Lithuanian Conservatives. No such anti-communist/ex-communist divide existed in Estonia and Latvia. The consequence of this Lithuanian divide is that debate over truth and justice measures has constantly ratcheted up; as soon as the TS-LK proposes or adopts a measure, the LDDP opposes it or even rescinds it later on. This has kept debates of truth and justice present in the political discourse for more than two decades.
3. By contrast, Estonia would appear to be a model case of where there has been a closing of the books concerning the past, and in relation to many domains. First, Estonia’s oath of conscience expired quietly in 2001 and was not revived. Second, the policy of releasing the names of ex-KGB agents has more or less ended. Third, Estonia formally concluded its international historical commission in 2008 with a clear set of final reports. And fourth, the party political landscape is dominated by other socio-political issues.
4. Latvia has equally concluded a number of its truth and justice policies, such as trials against Stalinist-era perpetrators. But as I mentioned earlier, controversy continues over what to do with the ‘Čekas maisiņi’, and the Latvian Historians Commission has been limited to producing historical research and not producingmore definite conclusions about the past. The TSDC has been an important agency for different aspects of transitional and retrospective justice, but its mandate and prominence has waned over the years. Another sign of ambivalence is how prosecutions against Stalinist-era- perpetrators began to slow down already in the late-90s and early 2000s.
5. Against the backdrop of these three very different countries, Eva-Clarita and I talk in our book about the ‘hands-on’ state in Lithuania, the ‘hands-off’ state in Estonia and the ‘ambivalent’ state in Latvia. These are our characterizations of the complete landscape of measures that each country has adopted over the last 20 years.

Let me therefore come to the final question, which is what does all of this mean for overcoming occupation. The literature on transitional justice is fairly ambiguous about what active policies of truth and justice can bring. Systematic comparative studies are difficult to do, since each case of non-democratic rule is unique and societal traumas are particular. Attempts to nevertheless quantify such cases (by counting the number of countries with truth commissions or trials) have been inconclusive and piecemeal.

My normative assessment would be that truth and justice efforts can become debilitating when (a) measures are too indiscriminate or improperly thought through, or (b) they become tools for political gain, or (c) they become part of an increasingly dogmatic historical memory or memory politics. I think we have seen some of this during truth and justice debates in Lithuania. At the same time, it is striking how sterile and matter-of-fact some these measures have been in Estonia. To be sure, one could say that this has provided Estonia with an opportunity to set its sights elsewhere. But it is difficult to judge whether this pragmatism hasn’t let too much of the past fade away. Latvia, finally, has exhibited a number of very wrenching debates about its past, which from the perspective of *Auseinandersetzung* has actually been a very good thing. But some of its policies have also been erratic, such as what to do with the ‘Čekas maisi’ or how to set clear legal frameworks to prosecute former NKVD perpetrators.

In all three countries there has clearly been more ‘truth’ than ‘justice’. This also points to the notion that these two phenomena need not be in equal proportion. Indeed, sometimes truth itself can be a kind of justice, especially where actual perpetrators may be dead or missing. Given that the Baltic states have both retrospective and transitional dimensions to their process of working through the past, it seems truth may ultimately predominate over justice.

1. It is also worth mentioning that at this point our specifically policy-based approach to looking at transitional justice begins to fade into what social scientists next call ‘the politics of history’ or ‘memory politics’. That is, formal commemorative events or official declarations not only serve the purpose of offering support to victims, they can also have a role in defining the nature of past events and shaping public perceptions. This is a much more fluid and interpretative analytical realm that we do not pursue in our book. [↑](#footnote-ref-2)