

ESTONIAN TRANSITIONAL JUSTICE: PREDICATED ON A
COLLECTIVE MEMORY

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ABSTRACT

In 1991 post-Soviet Estonia was confronted with the need to deal with the burdened legacies of its past and the independent regime began to implement transitional justice. This thesis argues that the process was predicated on a particular collective memory of the recent past that has been produced and reproduced through the works of two Estonian memory institutes, the Estonian International Commission for the Investigation of Crimes Against Humanity and the Estonian Institute of Historical Memory. This thesis analyzes the two institutes and their works, evaluating them as mechanisms of transitional justice. It argues that these two institutes regard the Soviet period of occupation as criminal, illegitimate, and immoral, and finds that the two bodies have selectively remembered Estonia's history and dismissed counter-narratives of the past, reflecting the goals of the present regime. As a result, some of the universal and normative goals of transitional justice have been compromised. Thus, this thesis concludes further efforts with transitional justice are required in Estonia.

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TABLE OF CONTENTS

| | |
|--|-----|
| ESTONIAN TRANSITIONAL JUSTICE: PREDICATED ON A COLLECTIVE MEMORY | i |
| Abstract | i |
| Acknowledgements | i |
| Table of Contents | iii |
| 1. Introduction | 1 |
| 2. On Memory | 6 |
| 2.1. History and Memory | 6 |
| 2.2. Collective Memory | 7 |
| 2.3. Memory and the Soviet Union | 8 |
| 3. Dealing with the Past..... | 11 |
| 3.1. Transitional Justice: the Goals..... | 11 |
| 3.2. Constraints and Considerations..... | 13 |
| 3.3. Approaches and Mechanisms | 15 |
| 3.3.1. Criminal Justice and Prosecution | 16 |
| 3.3.2. Truth Revelation..... | 17 |
| 3.3.3. Compensatory Justice..... | 20 |
| 3.3.4. Lustration | 20 |
| 4. Estonia and Transitional Justice | 22 |
| 4.1. Mechanisms of Transitional Justice Applied..... | 22 |
| 4.2. Estonian Institutes of Memory | 24 |
| 5. Estonia Under Oppressive Regimes: An Overview | 26 |
| 5.1. The Years of Independence | 26 |
| 5.2. The Soviet Occupation of Estonia: 1940-1941 | 28 |
| 5.3. The German Occupation of Estonia | 29 |
| 5.4. The Soviet Occupation of Estonia: From 1944 | 31 |

| | |
|---|----|
| 5.5. The Transition..... | 34 |
| 6. The Estonian International Commission for the Investigation of Crimes Against Humanity | 38 |
| 6.1. Establishment, Goals, and Mandate | 38 |
| 6.2 Presentation of the Commission’s Report | 41 |
| 6.2.1. The Soviet Occupation of Estonia: 1940-1941 | 41 |
| 6.2.2. The German Occupation of Estonia: 1941-1944..... | 44 |
| 6.2.3. The Soviet Occupation of Estonia: From 1944 | 46 |
| 6.3. Analysis and Evaluation of the Commission’s Report | 49 |
| 6.3.1. Approach | 49 |
| 6.3.2. Granting Victims the Right to Know..... | 50 |
| 6.3.3. Redressing Injustice | 51 |
| 6.3.4. Reparations..... | 54 |
| 6.3.5. Possibility of Denial | 55 |
| 7. The Estonian Institute of Historical Memory..... | 58 |
| 7.1. Establishment, Goals, and Mandate | 58 |
| 7.2. Analysis of the Estonian Institute of Historical Memory | 59 |
| Conclusion..... | 62 |
| Bibliography..... | 67 |

1. INTRODUCTION

*Memory, insofar as it is affective and magical,
only accommodates those facts that suit it”
Pierre Nora (1989)*

A society emerging from an authoritarian, totalitarian, and criminal past is confronted with the need to redress and acknowledge the burdened legacies of the past. In the transitional context, transitional justice is a process often implemented by the new regime seeking to deal with the burdened past and the crimes committed. There are various approaches to the process, yet each ultimately aims to punish the perpetrators and acknowledge the suffering of victims, and thereby prevent the reoccurrence of such tragedies, contribute to reconciliation, and establish accountability of the new regime (de Brito et al., 2001, 10). One additional important goal of transitional justice is to prevent forgetting and to preserve the truth by creating and preserving memory of the criminal past.

While theory distinguishes between different types of memory, for the purpose of my analysis I will adhere to the basic distinction between individual and collective memory. According to Emile Durkheim, if individual memories are commonly agreed upon, they transcend the individual and create a collective memory amongst those with the shared perspective, the collectivity. Moreover, Maurice Halbwachs argues that individual memory is to be understood in terms of the given group because collective memory is a cohesive notion based on the overall and dominant representation of the past that is to inform the present (1950; Lebow, 2006, 8-9; Assmann and Czaplicka, 1995). Collective memory of the past is built in a manner of ways, through public speeches, symbolic sites, and days of commemoration (Forsberg, 2003, 67). Through the establishment of collective memory based on a decided account of the past, there is the possibility for the new regime to influence what is remembered and how the process of

memory construction unfolds through the various approaches and mechanisms of dealing with the past (Forsberg, 2003, 69; de Brito et al., 2001, 24). As a process, creating collective memory requires the selection and interpretation of varying accounts and narratives to establish a dominant understanding of the past which is the least likely to be challenged in public discourse (Ignatieff, 1998, 188). The shared understanding of the past is consistently constructed and reproduced through community interactions and narratives that directly operate and reflect the present framework (Forsberg, 2003, 70; Assmann and Czaplicka, 1995). As a process, constructing a collective memory may be guided by particular, but also broader normative goals the regime deems to be important, and the decisions as to what should be remembered are chosen on this basis (Forsberg, 2003, 70). Therefore, institutions and structures, the locus of collective memory, can direct present and future politics and society. With regards to transitional justice, the mechanisms a regime chooses to employ may serve as a site of collective memory construction. Establishing a collective memory may be politically driven in the hopes that it will contribute to the broad goals of transitional justice - stability, accountability, reconciliation, and democracy. This notion of collective memory in its application to transitional justice will be utilized as the theoretical basis for this thesis and will be further detailed in its respective chapter.

After the collapse of the Soviet Union and the Eastern Bloc, the states of Central and Eastern Europe began their post-communist transition. Forsberg argues that the transitions of the 1990s added a normative dimension to the transitional justice discourse, focused on the international democratic ethos (2003, 65; Teitel, 2003, 87). In the post-Cold War context, building a national identity of the new independent and democratically-minded regime, distinct from the communist predecessor, was an important task (Teitel, 2003, 87; de Brito et al., 2001, 39; Offe, 1997). This desire required the production and establishment of an account of history, and thus the dominant narrative of the past to reflect the transitional circumstance and identity

(Teitel, 2003, 88). However, the way in which the new regime establishes a narrative of the past and moves forward is also within the limits posed by the international set of human rights established in the post-World War II context (Mendez, 1997b, 5). The growing idea of and actual international involvement has raised the stakes of transitional justice because dealing with the past is no longer left to domestic jurisdiction. Transitional justice has adopted attributes that are internationally normative such as backward-looking demands of accountability and concern for victims, as well as forward-looking demands for the rule of law, equal dignity, worth, and respect for each individual (Mendez, 1997, 1). These universally agreed upon values are deemed necessary for the modern democratic ethos, stability, and justice. Evidently, for a state seeking to join the international order, which many of the post-communist states did, transitional justice and its international dimensions became of utmost importance.

Upon independence from the Soviet Union, Estonia was confronted with the burden of the difficult legacies of the occupying Soviet and Nazi regimes, and in order to come to terms with the past, mechanisms of transitional justice were utilized (Stan and Nedelsky, 2013, 161). Thus in the process of achieving transitional justice, the Estonian past has been remembered in a particular way.

There are various mechanisms of transitional justice, each with their own specific objective, that are often adopted and operate in a joint or a combined manner. Criminal prosecutions, truth revelation, restitution, and symbolic justice all function in a way that produces and institutionalizes a specific memory. What and how the society chooses to remember may have important future consequences (de Brito et al., 2001, 37). The ways in which the above listed mechanisms of transitional justice function, as well as their positive and negative outcomes have been well studied (de Brito et al., 2001; Wouters, 2014; Elster, 2004; Mendez, 1997a,b; Teitel, 2000; Forsberg, 2003). However, there has so far been little to no research analyzing

memory institutes, which have been employed in recent years as part of the process of transitional justice seeking to establish a collective memory of the past. Estonia, Slovakia, and Latvia have each formed memory institutes seeking to objectively and impartially evaluate the difficult past, publicize the found information, and promote a certain account of memory of that past. It is not impossible that such institutes dismiss certain historical facts that fail to reflect the present political and social context, as well as the current regime's aims. There is thus a high probability that counter-narratives exist, and that perhaps these institutes do not meet their stated goals of objectivity.

This thesis seeks to evaluate institutes of memory as a mechanism of transitional justice in terms of their success in meeting the broadly stated normative goals of transitional justice. In order to do so, two Estonian institutes of memory, the Estonian International Commission for the Investigation of Crimes Against Humanity and the Estonian Institute of Historical Memory, will be analyzed. This analysis will allow for an understanding as to what Estonian collective memory has been produced through these mechanisms of transitional justice, and how successful they have been in meeting both the broader universal goals as well as those that are context specific.

This thesis will show how these two bodies have produced a collective memory regarding the near 50 years of occupation of Estonian territory – by the Soviet Union from 1940 to 1941, Nazi Germany from 1941 to 1944, and the Soviet Union from 1944 until its internationally recognized independence September 17th 1991– as criminal. An understanding of the Estonian past has likely become a tool to establish a narrative of the new democratic regime as distinct from the oppressive, criminal, occupying regimes. This thesis will research the ways in which, and to what degree these institutes of memory, as mechanisms of transitional justice, reflect this narrative, further establishing a collective memory that relates to the goals of the new regime.

This thesis will take an empirically driven approach in order to effectively understand the

ways in which collective memory has been established in post-communist Estonia. Focusing on the two institutes of memory, the thesis will assess whether the established collective memory and the process of historical selectivity have been justified and remained neutral in the sense that manipulation of the past has not occurred in meeting the aims of transitional justice. Moreover, the work and achievements of the two memory institutes will be evaluated by relating them to the universal normative goals of transitional justice. In order to do so, I will undertake a close reading of the reports published by the Estonian International Commission for the Investigation of Crimes Against Humanity. The findings and conclusions from this assessment will be supported by the relevant secondary literature, as well as statements made by Toomas Hiio and Meelis Maripuu, directors of the Estonian Institute of Historical Memory, in an interview at the institute May 2014 in Tallinn, Estonia. This approach allows for a thorough evaluation because the conclusions drawn are supported and derived from a variety of primary and secondary sources.

Chapter one explores the concept of collective memory. Chapter two highlights the theoretical aspects of transitional justice with a focus on the interplay between its normative goals, on the one hand, and the specificities of context which constrain the application of transitional justice mechanisms on the other. The third chapter provides a descriptive overview of the past regimes, their criminal activities, and the nature of the transition, respectively. The fourth and fifth chapters each assess the Estonian International Commission for the Investigation of Crimes Against Humanity and the Estonian Institute of Historical Memory, providing the details of their establishment, mandates, and findings in relation to the broad, normative goals of transitional justice.

2. ON MEMORY

2.1. HISTORY AND MEMORY

Constructing a narrative of the past revolves around history making, selective remembering, forgetting, and establishing a meaning of the past (de Brito et al., 2001, 24). A dominant and accepted narrative of the past provides meaning for the present and future, and largely guides culture, society and politics. Consensus over historical fact and acknowledgement of the past provides individuals with ownership of their history. Applied to transitional justice, this idea reads that victims may gain ownership of their subjugation (Mendez, 1997b, 12). However, memory is subject to interpretation and often seen as a disjuncture between representation of the past and historical fact. De Brito et al., view memory as a struggle for power and control over the construction of narratives for the future (2001, 38; Confino, 1997, 1393; Bresco de Luna and Rosa, 2012, 301). A dominant memory influences the given society by providing an established interpretation of the past, including the control over the choice of events that will be ignored or, in contrast, emphasized. The past is thus selectively appropriated, remembered, and reinforced, shaped by present considerations, circumstances, and goals of the given collectivity (Halbwachs, 1950; Lebow, 2006, 13).

There are many forms of memory, and ways through which memory is manifested and preserved. There are individual, collective, cultural, and official or institutional memories and they may be created through a variation of narratives, cultural practices, state policies, commemorative events and *lieux de memoire*¹. Individual routines and daily practices

¹ French theorist, Pierre Nora's concept of *lieux de memoire*, or sites of memory describes the modern appropriation of historical events beyond recognition, serving the political and cultural aims of the given society (Nora, 2001).

consistently re-appropriate historical events transforming their factual basis beyond recognition (Nora, 2001). Memory is thus never a record of the factual history, rather it is the way in which past events are remembered reflecting the present circumstance.

Individual memory is ultimately a personal and autobiographical interpretation of an experienced event (Halbwachs, 1950). However, according to Maurice Halbwachs, individual memories are socially constructed within the framework of the given society and reflect present concerns (1950; Lebow, 2006, 13). Individual memories are thus linked and understood in terms of the group consciousness as the individuals themselves communicate and interact, reflecting the dominant discourse of past events in relation to the present society's circumstance and concerns (Lebow, 2006, 8-9; Assmann and Czaplicka, 1995; Confino, 1997). Memory is therefore relational and must be studied in its collective context, and cannot be taken as history; it is largely circumstantial and context-dependent.

2.2. COLLECTIVE MEMORY

This dependency on context supports the notion that collective memory results from individual memories that have transcended into a dominant memory that is shared by group members (Halbwachs, 1950). Taking a constructivist stance, a community is often constituted by its past and the way in which the past has been dominantly understood. Furthermore, the collective memory is reproduced over time and is reinforced through traditions, cultural norms and practices that take place among the community members. Collective memory is therefore a two-sided process in which “memory makes us and we make memory,” (Tonkin, 1991, 97). Memory provides the given group with a framework that informs and delineates the actions of its members by structuring the way in which they perceive their past and present (Tonkin, 1991, 97).

With its selective nature in mind, collective memory may be interpreted and influenced by

an “institutional” memory that operates on a broader social and national level. Institutional memories involve the construction of the collective memory, its dissemination, and imposition, often by political elites in order to further a specific understanding of the past that is deemed to be important in the present (Lebow, 2006, 13).

Therefore, collective memory must also be understood in terms of its relation to counter-narratives of the past. Counter-narratives are not dominant because of the way they reflect the present circumstance, perhaps failing to reflect the present political and social goals of the collectivity (Confino, 1997), or the dominant politically shaped interests.

The political nature of memory sheds light on why many historical interpretations of the past are contentious when the counter-memory stands in contrast to the dominant collective memory (de Brito et al., 2001, 36). For example and relevant to this project, the Soviet mobilization into and occupation of Estonia in 1944 has been contested due to differing perspectives among those involved in the historical events, and those presently representing the various collectives once a part of it (Fofanova and Morozov, 2009, 28; Brüggemann and Kasekamp, 2009, 54; Haukkala, 2009, 164). This example, as well as other contested historical events, demonstrates the relevance of counter-narratives and the dismissal involved in the process of establishing a collective memory of the past. This however, does not imply that ‘anything goes’. One reason I insist on universal normative features of transitional justice is that they provide a set of criteria for judging the right from the wrong use of collective memory.

2.3. MEMORY AND THE SOVIET UNION

Under Soviet rule, the party-state monopolized the politics of memory in Estonia (Brüggemann and Kasekamp, 2008, 426; Tamm, 2013, 653). In order to maintain this control, the Soviets systematically attempted to dilute the Estonian national consciousness through various

means, including deportations, the re-writing of textbooks, imposition of the official version of the ‘truth’, and denying access to archives and other sources of historical knowledge. Certain narratives of the past were established as the official historical record to fit within the Soviet framework. For example, the Soviets perceived their entry to Estonia February to November of 1944 as a liberation, while in the Estonian counter-narrative, “one occupation simply replaced another,” (Fofanova and Morozov, 2009, 28). Conflicting perspectives of the given historical event were ignored and many individual memories and expressions of such counter-narratives were suppressed.

Upon transition, the newly independent Estonian elites were confronted with the need to deal with the burdened legacies of the country's past. This obligation required acknowledgement of the past, and the construction of an established account of history that would satisfy the transitional as well as the future goals (Brüggemann and Kasekamp, 2008, 428) which led to the construction of a new collective memory regarding the same historical events (Coser, 1992). The counter-narratives of the past – the inter-war period of independence, the three occupying regimes, and the crimes committed – resurfaced and largely became the collective memories of independent Estonia. The new Estonian elites encouraged the Estonian population to revive their memories of the times prior to the occupations and of national traditions, as well as those of the occupations. Vello Pettai asserts that in such periods of dramatic change, people resort to the continuity of traditions, avoiding critical reflection of their past (1993, 117-125). In turn, sentiments and memories of pre-occupied Estonia were officially propagated. Memories of the past were thus re-awakened, institutionalized as the dominant collective memory in post-communist Estonia, and backed by a claim for moral integrity (Konrad, 1991, 84). This effort was to further distinguish the new regime as one based on the rule of law and equal moral worth from the previous criminal regime (Fofanova and Morozov, 2009, 27; Onken, 2009, 44;

Brüggemann and Kasekamp, 2009, 61; Astrov, 2009, 86).

Therefore, a specific memory of the oppressive Estonian past has been constructed and reconstructed in the post-transition years. In this process the two institutes of memory examined in this thesis have played an especially important role. However, first, a general theoretical overview of transitional justice, its aims, mechanisms, and constraints will be provided, followed by application of the theory to the case of Estonia and its two memory institutes.

3. DEALING WITH THE PAST

3.1. TRANSITIONAL JUSTICE: THE GOALS

A new political regime emerging from a criminal past is confronted with a series of challenges combining questions of how to deal with the past atrocities with how to move forward (Forsberg, 2003, 65). In reference to Christine Bell, the “common project” of transitional justice is to consensually find a mechanism to help in “dealing with the past” to establish reconciliation and stability for the new regime (Bell, 2009; Wouters, 2014, 10). Moreover, Juan E. Mendez argues that redressing the wrongs is “an urgent task of democratization, because it highlights the fundamental character of the new order to be established, an order based on the rule of law and on respect for the dignity and worth of each human person,” (1997b, 1). Therefore, pursuing justice both during the period of transition and post-transition is critical for the new regime attempting to establish itself as stable, accountable, and legitimate, thus distinct from its predecessor.

However, the third wave of democratization² has deepened the transitional justice discourse by adding a normative dimension that is concerned with values of democracy on an international scale (Forsberg, 2003, 65), thus emphasizing the international element of transitional justice (Teitel, 2003, 70-71). An expectation that states abide by international law was formed, accepting an established order of morality, and thereby adopting the international democratic ethos rooted in international human rights law, as well as the need for stability and

² The third wave of democratization refers to the surge of democracy that began in the 1970's and includes the democratic transitions of South-West Europe, Central and South America, countries of Pacific Asia, and the Eastern European countries after the collapse of the Soviet Union (Huntington, 1993).

accountability (Teitel, 2000, 34; Mendez, 1997b, 5). There is thus an affirmative obligation of states to investigate and punish crimes that have violated non-derogable rights, *jus cogens* of international law. As a result, dealing with the past became a necessary component of the transition for regimes in the third wave of democratization.

Dealing with past atrocities and human rights abuses signifies a respect for the human condition and represents the reestablishment of the moral order as defined by the widely accepted international democratic ethos (Forsberg, 2003; Mendez, 1997a,b; Zalaquett, 1995). Adherence to values associated with the international democratic order was desired by many of the post-communist states seeking to transition and consolidate themselves as distinct from its predecessor (Teitel, 2003, 76; Mark, 2010, 27-28). In a sense the new regime could then be internationally legitimized through the rule of law, trials, and justice, as a means of appropriately coping with the burdened legacies of the past.

Moreover, the post-Cold War wave of democratic transitions introduced a form of transitional justice closely tied to nation-building (Teitel, 2003, 71). Yet, international norms simultaneously present a constraint for the new democracy (Mendez 1997b; Mendez, 2001; Orentlicher, 2007; Zalaquett, 1995). The new regime cannot undermine international norms, but also seeks to respect local conditions and constraints, therefore a balance between promoting the universally normative standards of the rule of law and the transitional political context is needed (Teitel, 2003, 76; Mendez, 2001, 29). The most appropriate approach to deal with the past is context-dependent, and yet must simultaneously operate within the universal, normative framework. The following section will discuss the constraints and considerations typical of transitional justice that define and shape this balance.

3.2. CONSTRAINTS AND CONSIDERATIONS

The selection of mechanisms and narratives to be adopted is often dictated by the imperative to establish and preserve balance between the universally accepted normative goals while respecting the local context. There are three predominant factors that limit and structure a given regime's approach to transitional justice: the type of the transition, the dominant beliefs and attitudes of the transitional society and elites, and the nature of the predecessor's regime and the crimes committed.

The process of dealing with the past is linked with the type of transition. The mode of transition varies depending on who initiated and piloted the transition, whether it be the incumbents, the opposition, or civil society, the level of confrontation and the strategies adopted. In the transitional context de Brito et al. identify certain intervening variables - the negotiations between the groups, their strength and strategies – that condition how and why certain measures are adopted rather than others (2001, 13). For example, a regime change initiated and affected by the opposition through a revolution typically removes all the power of the previous government, and thus prosecution and punishment of the old elites is much more likely. On the other hand, if the old elites had retained some degree of power through a pact or negotiated transition, the new regime may opt for a less public punishment of the former elites (de Brito et al., 2001, 12). Structural constraints defined by the transitional actors, their strength and strategies certainly shape and frame the various measures and approaches to transitional justice. Additionally, the mode of transition also contributes to the attitudes and beliefs related to the process defining the way in which the past is to be dealt with and remembered, and thereby influences the dynamics of memory construction and the dissemination of a particular narrative of the past (de Brito et al., 2001, 35).

Moreover, Jon Elster specifically identifies constraints that result from beliefs and attitudes (2004, 216) where trade-offs are made over more tangible concerns such as the perceived need to prioritize economic development, the reluctance to be backward looking, and the overall perception towards the previous regime (Elster, 2004, 213, 217). Taking the normative assumption that democracy and the associated values of accountability and stability are what is strived for, Kaminski et al. argue for the near impossibility to meet all the desired goals, universal and local (2006, 298). In the process of transitional justice, trade-offs are thus the norm and values come at the cost of others. What is prioritized has important implications for the available mechanisms, and the necessary compromises to be made in order to achieve the normative and locally-specific goals of transitional justice. For example, the need to criminalize the predecessor's regime instead of achieving a society based on equal worth, respect, and dignity for all individuals may result in mechanisms centered on criminal justice instead of public apologies and efforts at reintegration and reparation. This criminal justice based approach may have consequences to the realization of a society based on equality and respect. Regardless of the selected approach, this sort of dilemma is important to the process of transitional justice.

The third identified constraint to transitional justice is the nature of the criminal regime and the crimes committed under that regime (de Brito et al., 2001, 19). The crimes themselves and the way in which they were committed influences the way they are responded to, and how they should be dealt with as part of the transitional process. For example, in Estonia, the crimes under the Soviet Union were often clandestine, repression, secret police activities, and arbitrary arrests left the Estonian population with a black-hole of knowledge. With the advent of transition, Estonians actively sought to uncover these crimes and reclaim ownership of their past subjugation (Tamm, 2013, 654; Laar, 2004, 226-227). If a goal is to establish a record of the past, mechanisms involving investigation and revelation would be more effective than criminal trials

or reparatory efforts. Evidently, the nature of the previous regime and the crimes committed influences the mechanisms of transitional justice to be adopted. The following section will discuss the various approaches.

3.3. APPROACHES AND MECHANISMS

There are two dominant approaches to dealing with a burdened past. They can be simply understood as a choice between forgetting or forgiving, with all the variations between these two 'ideal types'. Increasingly, acknowledging the burdened legacies of the past and legally addressing the wrongdoings of the predecessor's regime is becoming the norm. In this thesis I will follow the approach of Juan Mendez. Juan Mendez has proposed four responsibilities for the state to help them move forward to a less adversarial future and achieve the normative universal goals of transitional justice while considering the context specifics (1997b, 12). Each of these obligations are not goals in and of themselves, they are processes to be incorporated in the selected mechanism of transitional justice in the hope of meeting the normative goals. Mendez' proposals will be taken as a theoretical basis for the evaluation of Estonia's success in meeting the broadly stated, universally accepted, and legitimate normative goals of transitional justice and these four proposals will be directly applied in the evaluation of Estonia's transitional justice process, specifically with regards to the two institutes of memory under study.

The obligations proposed by Mendez are as follows, (1) there is an obligation for justice, in that abuses and crimes committed in the past need to be punished, (2) the victims have a right to know the truth which allows the state to investigate and establish a record of the past, (3) the victims should also be granted some form of reparation for the harms done, and (4) those who committed the crimes should be removed from public office positions (1997, 12). A commitment to fulfill each of these obligations will have the effect of establishing accountability and

legitimacy for the new regime internally and externally, contributing to the regimes attempt to meet the normative goals of transitional justice while focusing on their particular circumstance.

In light of Mendez' approach I intend to explore mechanisms of transitional justice – Estonian memory institutes in particular. There are a multitude of mechanisms to deal with the past that may be utilized by the new regime, however, the various mechanisms are rarely singly adopted, and often operate in conjunction with others. In their broadest sense, four mechanisms of transitional justice will be listed and briefly described with an emphasis on their benefits and drawbacks in an attempt to relate them to the goals and constraints thus far discussed.

3.3.1. CRIMINAL JUSTICE AND PROSECUTION

The new regime may opt for criminal justice to punish, prosecute, and hold those responsible accountable. The idea of punishment dominates the traditional understandings of transitional justice (Teitel, 2000, 28). As a mechanism of transitional justice, criminal prosecutions allow for a direct line of accountability, personal responsibility, and it also re-establishes the moral order by delegitimizing the previous regime. Specific to the context of transitional justice, criminal justice is focused on the identification and exposure of wrongdoers for crimes that have been recognized internationally. There is arguably a demand from the international community for states to implement measures of criminal justice (Zalaquett, 1995; Orentlicher, 2007), and the process is often based on international legal norms. The international legal element of criminal justice is thus prominent and salient. However, the process also seeks to enhance and establish the rule of law to legitimize the new democracy and restore the dignity of victims, emphasizing the importance of local considerations (Teitel, 2000, 28) making the previously mentioned dilemma of needing to balance the universal and local context evident.

Morally, criminal justice is often based on the rationale of desert. However, certain

dilemmas, as to how to identify individual crimes, how to proportionally punish the offenders, how to avoid an impunity gap, and how to incorporate international law into a local context, matter (Orentlicher, 2007; Teitel, 2000, 33). Perpetrators sometimes remain beyond reach, for different reasons: with mass atrocities, it is sometimes difficult to distinguish direct perpetrators from the whole chain of complicity (the Holocaust, My Lai); sometimes crimes were committed in secrecy (Argentina's 'dirty war'); sometimes the nature of the regime change involves a degree of protection of the perpetrators against criminal justice (some Latin American countries, South Africa). Problems of selectivity thus are likely to arise (Mendez, 1997b, 17). Regardless, there is an inherent moral and normative value in bringing perpetrators to justice. Victims are left with the explicit knowledge that the wrong-doers have been punished, the regime as a whole demonstrates a moral break from the past and is based on the rule of law. The criminal justice mechanism of transitional justice is perhaps the most intuitive and frequently employed (Teitel, 2000, 28).

3.3.2. TRUTH REVELATION

The second identifiable mechanism tied to Mendez' obligation for the new regime is truth revelation, where special mechanisms are created to investigate the past and establish "what really happened." De Brito et al. identify pursuing truth as one of the two dominant policies of transitional justice in post-communist states (2001, 5). Establishing a record of the past has come to represent acknowledgment of the crimes committed, to reintegrate victims, and provide "social awareness, collective memory, [and] solidarity," (de Brito et al., 2001, 21). However, it is important to ensure that efforts seeking to establish a record of the past do not prioritize any aspects of history to suit the present conditions, but instead allow the facts to speak for

themselves (Mendez, 1997b, 14). The difficulty is that history is a constructed process and selectivity and interpretation are nearly inevitable, which likely leads to the dismissal of certain counter-narratives (Halbwachs, 1950; Assmann and Czaplicka, 1995). Such challenges are an obvious drawback of mechanisms of transitional justice seeking to establish an accepted historical record. However, an understanding of the past, and thus the dominantly accepted narrative, is meant to help the transitional society achieve reconciliation and re-establish accountability, thereby meeting the normative goals of transitional justice with a specific focus on the local conditions. These goals can be achieved through various bodies of truth revelation.

3.3.2.1. TRUTH AND RECONCILIATION COMMISSIONS

The most commonly known and well-studied mechanism of transitional justice dealing with the process of truth revelation is the truth commission (Hayner, 2011; Dyzenhaus, 2000; Kaminski and Nalepa, 2006). Truth commissions are tasked with uncovering and revealing the wrongdoings of previous regimes in order to contribute to reconciliation, prevent the reoccurrence of crimes, and to leave the victims with a sense of acknowledgement for their suffering. However, truth commissions do not directly punish perpetrators and may lead to impunity. This may be seen as a drawback however, once again, transitional justice and its goals are context specific.

Using Hayner's definition, truth commissions directly engage with those involved, the perpetrators, victims and witnesses, are focused on a series of events that took place in a specific timeframe, are officially authorized by the state, have a temporal limit and are meant to produce a formalized report of the findings (2011, 11).

3.3.2.2. MEMORY INSTITUTES

Similar to truth commission in terms of the need to establish a record of the past, memory institutes have been established in several post-communist states, including Estonia, Latvia, and Slovakia, in response to the nature of the clandestine crimes committed under the Soviet Union (Mark, 2010, 31). Yet, this mechanism of transitional justice is largely missing from the literature.

Memory institutes are distinct from truth commissions as they do not necessarily assume the close collaboration with all those involved in the given historical events to be investigated. In particular, they do not require direct juxtaposition of perpetrators' and victims' narratives on discrete events. They are not necessarily required to produce an end result of their works nor are they restricted temporally in any sense. For definitional purposes, memory institutes will be understood as a mechanism seeking to reclaim the past. In order to "reclaim the past," memory institutes aim to establish a narrative of the given historical event or time period, where this narrative is to be widely accepted and perceived as legitimate through some form of investigation and research. Furthermore, through this established record of the past a collective memory is constructed which often has the effect of distinguishing the new regime from the previous, defined by its oppression and criminality (Mark, 2010 27-28). The way in which this process is done will be understood in oppositional reference to truth commissions, using Hayner's definition detailed in section 3.3.2.1. Memory institutes are less restricted in terms of what historical events are to be examined, how, when, and what the final outcome of the findings are expected to be.

This definition will be utilized for the evaluation of two bodies considered and deemed to be memory institutes, the Estonian International Commission for the Investigation of Crimes Against Humanity and the Estonian Institute of Historical Memory.

3.3.3. COMPENSATORY JUSTICE

Related to the third obligation proposed by Mendez, focused on granting the victims some sort of reparation for the harms done, the third mechanism to be described is compensatory justice. Compensatory justice is focused on the victims and seeks to provide them, individually and collectively, with some form of remedy for past suffering, support for reintegration, and rehabilitation. However, suffering may be of different kinds. Jon Elster distinguishes among material, personal, and intangible suffering (2004, 168). This distinction implies normative dilemmas regarding the identification of victims, identification of harm, and pinpointing the responsible agency. Measures of compensatory justice have to take all these considerations into account (Elster, 2004, 167; Teitel, 2000, 146-147). Thus, compensatory justice may come in a multitude of forms, for example reparations may be symbolic, monetary, or come through some form of restitution.

3.3.4. LUSTRATION

The fourth and final obligation noted by Mendez is to remove the perpetrators from positions of public service. As mentioned, there are certain practical and legal constraints to criminal justice in the process of transitional justice; therefore lustration serves as an alternative means to punishing the perpetrators. Lustration is typically identified as a mechanism specific to post-communist transitional justice - it is “the systematic vetting of public officials for links to the communist-era security services,” (Williams et al., 2005, 23).

Within the transitional post-communist states lustration was deemed necessary due to several reasons: the fragile nature of the transitional regime, the *long durée* of the old regimes, the widespread moral and political corruption of the party-state apparatus that involved forms of collaboration going beyond criminal responsibility (most notably, extensive networks of secret

police that in some countries included tens of thousands of informers). Lustration was ultimately a means of ensuring that the distrustful former elites and their informal networks would not permeate the new democratic state, nor would individuals holding personal secret police archives be blackmailed into exposure (Williams et al., 2005, 28). There was a sense that those associated with the previous regime needed to be excluded from certain public positions due to their previous record, and the sense that they were not to be trusted (Williams et al., 2005, 28). Generally, lustration can be understood as the legitimate removal or disqualification of an individual from a certain position or power based on a legally specified set of criteria. However there are various systems and laws of lustration³ (David, 2006).

3 For a complete overview of the different laws, systems, and effects of lustration, see Roman David's "From Prague to Baghdad: Lustration Systems and their Political Effects," 2006.

4. ESTONIA AND TRANSITIONAL JUSTICE

In relation to post-communist transitional justice, the crimes committed in the Soviet Union were of a particular nature that influenced the measures adopted. Under the Soviet regime, the degree of repression, secrecy, and censorship was high, limiting individual freedom and liberty (Stan, 2009, 6). Due to the high level of secrecy and suppression in Estonia, upon transition there was a collective demand for an understanding of the crimes that were committed, and an established record of the past was arguably one of the first transitional steps (Laar, 2004; Stan and Nedelsky, 2013, 161). Accordingly, Estonia's experience with transitional justice has largely been predicated upon the construction of a collective memory that has had the effect of distinguishing the new regime from its three periods of occupation. Since independence in 1991 Estonia has adopted six identifiable mechanisms of transitional justice. However they have each been based on the view that the Soviet period was illegal, criminal, and thus, the country has been dealing with repressive acts committed by a foreign power rather than by Estonia itself (Stan and Nedelsky, 2013, 161). Therefore, in Estonia's transitional context, establishing a collective memory of the previous regime has been crucial for the new regime's attempt with transitional justice (Teitel, 2003, 87; de Brito et al., 2001, 10; Wouters, 2014, 14). Moreover, the way in which the new regime has chosen to cope with past crimes is a direct reflection of the available and appropriate mechanisms that were conditioned by the nature of the crimes, the nature of the transition, and the prioritized goals of the transition, as defined by the new regime.

4.1. MECHANISMS OF TRANSITIONAL JUSTICE APPLIED

Estonia's approach to transitional justice is largely predicated on distinguishing the new

regime through its moral inversion to the previous occupying powers, collectively remembered as criminal, immoral, and oppressive (Fofanova and Morozov, 2009, 27; Onken, 2009, 40; Brüggemann and Kasekamp, 2009, 61; Astrov, 2009, 86). The new regime chose to deal with, and remember its oppressive past by employing six measures, each aimed at producing a memory of the country's recent history. Lavinia Stan and Nadya Nedelsky identify Estonia's six mechanisms as: victim rehabilitation, property restitution, the written oath of conscience, revealing the names of former security agents, prosecuting crimes against humanity, and symbolic justice (2013, 162-167). However, the majority of the crimes and repression, including the forced evacuations, deportations, and murders were committed under Stalin and ceased after his death in 1953 (Raun, 2003, 189). Since transition began roughly 40 years after the end of Stalin's regime, the pursuit of criminal justice was limited; many of those involved had already died or were too ill for criminal proceedings (Kaitsepolitsei, 2014). Although, some individuals have been tried by the Estonian state, as well as by the European Court of Human Rights (Kaitsepolitsei, 2014). Considering the employed mechanisms, lustration was very limited, consisting solely of the written oath of conscience (Nedelsky and Stan, 2013, 161; Kaminski and Nalepa, 2006, 399). The written oath of conscience requires individuals seeking a position in public office to vow that they

"have not been in the service or an agent of security organizations, military intelligence or counter intelligence services of states which have occupied Estonia and that they have not participated in the persecution or repression of citizens for their political convictions, disloyalty, social class or service in the government or defence services of the Republic of Estonia." (Act on Procedure for Taking an Oath, Article 1, 1992, 1).

Estonia's experience with property restitution has been controversial. The legal owners of Estonian property in 1940 were legally able to reclaim ownership in June of 1991, evicting tenants, and possibly leaving many homeless (Feldman, 1999, 167-169; Nedelsky and Stan, 2013,

163). The process of confronting the past was arguably delayed (Onken, 2007, 110; Pettai, 1993, 117-125).

Moreover, Eva Onken points to the fact that “many Balts shied away from engaging too actively in a policy of confronting the recent past,” fearing that it would “endanger social stability in the young democracies,” (Onken, 2007, 110). However, as Estonia was increasingly cooperating and seeking membership with the European Union and NATO, the pressure to deal with the criminal past was mounting (Onken, 2007, 110; Kott, 2007, 321). Specifically, Estonia needed to come to terms with the possibility of Estonian involvement and collaboration with criminal activities, particularly with reference to the Holocaust. Leverage of membership into the European Union and NATO likely motivated Estonia to deal with its burdened historical legacies (Brüggemann and Kasekamp, 2008, 437). Perhaps the international environment and political context led to the culmination of former President Lennart Meri convening the Estonian International Commission for the Investigation of Crimes Against Humanity in 1998 (Onken, 2007, 110; Kott, 2007, 321).

4.2. ESTONIAN INSTITUTES OF MEMORY

As mentioned, there are various constraints to the process of transitional justice. An important problem is the tension between history, memory, and justice (Teitel, 2003, 78; de Brito, 2001, 25; Forsberg, 2003, 72). This dilemma is particularly salient amongst post-communist transitional societies, including Estonia, that have attempted to uncover much of the hidden activities and crimes that took place under the communist regime (Teitel, 2003, 81; de Brito et al., 2001, 5; Mark, 2010, 27-28).

The Estonian International Commission for the Investigation of Crimes Against Humanity and the Estonian Institute of Historical Memory have propagated a particular notion of the

Estonian past based on their findings, which will be assessed in proceeding chapters. As mechanisms of transitional justice meant to establish an understanding of the past, thereby contributing to the construction and dissemination of a collective memory, their work is important for an evaluation of Estonia's success with transitional justice. However, when considering the details of memory institutes and the process of collective memory construction that has been described, this sort of institute needs to be critically analyzed. This analysis will show that despite the claim of objectivity, memory institutes are largely focused on the task of criminalizing the previous regime. This outcome brings into question the dilemmas described above relating to transitional justice mechanisms seeking to uncover the past, producing an accepted historical narrative. There are inevitable concerns over selectivity, objectivity, and the possibility of manipulation in the process of establishing an understanding of the past.

In order to properly contextualize the critical analysis of the two Estonian memory institutes, and evaluate their success in light of the above stated dilemmas, I need to depart from a historical overview of Estonia's recent history, beginning with the inter-war years of independence and ending with its internationally acknowledged independence in 1991.

5. ESTONIA UNDER OPPRESSIVE REGIMES: AN

OVERVIEW

5.1. THE YEARS OF INDEPENDENCE

Li Bennich-Björkman argues that Estonia's historical legacy, particularly the period of independence between World War I and World War II, has been formative in the country's transitional process. Memories of this period were carried throughout the years of occupation and the attempts to suppress Estonian nationalist and independence-minded sentiments (Bennich-Björkman, 2007, 317-319). After World War I, the German occupiers handed power to the Estonian Provisional Government. However, Soviet Russia was attempting to recover lost territory and occupied Estonia, leading to the war for Estonian Independence. Independence was gained and recognized on February 2nd 1920 with the Tartu Peace Treaty, signed by Estonia and the Russian Soviet Federative Socialist Republic.

In Estonia independence and the 1920's signified a period associated with, and a continuation of, the national awakening of the 19th century. The use of the Estonian language, literature, and education, as well as traditions including the song festivals contributed to the further solidification of the cultural autonomy originally sought in the late 1800's (Raun, 2001, 133-137; Jansen, 2004). The inter-war period can be characterized by a political culture of communalism, cooperation, and individualism that was embraced and idealized amongst Estonians (Bennich-Björkman, 2007, 341). However, following this brief period of independence, and the establishment of the Estonian political, social, and economic culture, the Republic of Estonia was signed into the "secret protocols" of the Molotov-Ribbentrop Pact and

became a part of the Soviet “sphere of influence” on August 23rd, 1939.

The Soviet Union occupied the Baltic state and began to send Soviet forces into Estonia by late August 1939 (Raun, 2001, 139-140). On September 26th, 1939, members of the Estonian government decided to enter into negotiations over a mutual assistance pact with the Soviet Union, all the while attempting to accommodate a degree of German interests in the region, officially taking a neutral stance by balancing the interests of both powers in a hostile environment (Raun, 2001, 142). Soon after, a Soviet mission targeted against Finland violated the mutual assistance pact, which the Estonian government did not protest. With the ongoing Winter War between Finland and the Soviet Union more and more Soviet troops were based in Estonia (Raun, 2001, 143). After Nazi Germany had invaded France and began the move Eastward, the Soviet Union took advantage of the secret protocols of the Molotov-Ribbentrop Pact and presented the Estonian ambassador in Moscow with an ultimatum demanding that “a government be established in Estonia that would be capable and willing to warrant honest execution of the Soviet-Estonian mutual assistance pact,” to protect “the most important centers of Estonia,” despite the near 30,000 Soviet troops already stationed in Estonia (Raun, 2001, 144; Brüggemann and Kasekamp, 2009, 54). With limited options, the President of Estonia, Konstantin Päts, believed that “Estonia's best hope for survival remained in avoiding any confrontation with the USSR,” (Raun, 2001, 145). Thus, the Estonian government conceded to the Soviet demands and in the next two days, 90,000 Soviet troops entered Estonia (Raun, 2001, 143). The Estonian cabinet was reorganized and referred to as the “people's government,” (Raun, 2001, 145). Elections took place and 92.8% of votes went to the Estonian Working People's League, a leftist bloc with the Estonian Communist Party. Moreover, opposition candidates were either “coerced and frightened into withdrawing or had been disqualified as ‘enemies of the people’” (Raun, 2001, 145-146). On August 6th, 1940 Estonia was officially annexed into the

Soviet Union and the process of Sovietization began in all aspects of Estonian life, ending the inter-war period of independence.

5.2. THE SOVIET OCCUPATION OF ESTONIA: 1940-1941

As mentioned, the Soviet Union took advantage of the secret clauses of the Molotov-Ribbentrop Pact and occupied Estonia demanding the existing government to yield (Raun, 2001, 143-144) and on August 6th 1940 Estonia was “voluntarily” announced as a Soviet Socialist Republic (Raun, 2001, 143-146).

Moscow instated Soviet representatives who officially made-up a legislative body with concentrated political power on August 25th 1940, marking the end of independent Estonian state institutions and the Sovietization of structures and the constitution (Raun, 2001, 143-146). The next year saw the end of civil associations, private ownership, and the beginning of collectivization and nationalization.

Political transformations modeled after the Soviet Union took place, concentrating power in the hands of the growing Estonian Communist Party that was mostly made up of communists from “other Union Republics,” (Raun, 2001, 150), and were protected by the large number of Soviet troops. Meanwhile, Estonian political figures, including ministers and heads of states from the independence era were deported to Soviet Russia, and many Estonian officers were arrested and deported, or sent to prison camps (Raun, 2001, 150-151). Economically, nationalization of large industries, banks, and large houses⁴ occurred without compensation (Raun, 2001, 151). The standard of living declined, purchasing power dropped, savings of over the equivalent of 1,000 rubles were confiscated, the average workday was lengthened, agricultural reform took place

4 A standard for living space was established at 9² meters per capita and any building with more than 220² meters of “useful floor space” in large cities and 170² meters elsewhere was nationalized in October of 1940 (Kareda, 1947, 102-103).

decreasing individual holdings of arable land, state farms were established, and farmers who had settled during the period of independence were discriminated against (Raun, 2001, 151-153). Culturally, the Estonian language and display of national symbols were discouraged and often banned, the availability of Russian literature, radio, and theatre was on the rise and Soviet ideology was actively promoted and disseminated (Raun, 2001, 154-156). Given that religion was perceived as a major obstacle in the realization of Soviet goals in Estonia, religious practice was abolished, church property was expropriated, and many members of the clergy were prosecuted and deported (Raun, 2001, 156). Meanwhile, Nazi Germany attacked the Soviet Union in June of 1941. By July 5th, the Nazi's reached Estonia and were greeted by the Estonian people as liberators. The Soviet forces retreated as the German forces continued in their advance with a general sense of welcoming and help from Estonian partisans, and took control of Tallinn August 28th of 1941 (Brüggemann and Kasekamp, 2008, 427).

“The actions of Estonia's leaders did have a significant impact on the fate of the country and that despite official neutrality, Estonia took an almost overtly pro-German stand...thus encouraging Soviet suspicions and ignoring Soviet security concerns. Furthermore, it is implied that with better leadership – including the possible armed resistance – Estonia could conceivably have limited the Soviet role to a wartime occupation and avoided annexation,” (Raun, 2001, 142; Parming, 1977, 47-48, 89).

5.3. THE GERMAN OCCUPATION OF ESTONIA

After the Nazi forces had gained full control of Estonia by October 21st, 1941, most of the Soviet communists had fled, except a few who remained underground conducting anti-Nazi pro-communist activities (Raun, 2001, 153-158). Generally, the Nazi occupation of Estonia was argued to be much less severe than in other Eastern European countries. Alfred Rosenberg, the Reich Minister for the Occupied Eastern Territories, argued that the Baltic's could become “truly German” through the “Germanization of the racially suitable elements,” and forced

displacements (Raun, 2001, 159-161). In comparison to the Soviet occupying regime, Estonian suffering was less severe under the Nazi regime (Brüggemann and Kasekamp, 2008, 428). The main Nazi targets were leading political figures that had opposed the Nazi regime, communists, and the Jewish population. The Nazi regime allowed significantly more cultural and national expression and autonomy than the Soviets had throughout their occupation. The Estonian primary education system was restored; restrictions on Estonian literature, religion, and national newspaper were also much less hostile and strict (Raun, 2001, 166-168).

Many Estonians conscripted by the Soviet Red Army deserted to the German side, yet many were sent to Germany as prisoners of war or were unable to return to Estonia. An Estonian Waffen-SS unit was eventually established on a voluntary basis requiring the full adoption of Nazi ideology and had no support for ideas of Estonian independence (Raun, 2001, 157-158). However, there were not many volunteers and the German occupiers turned to outright mobilization and continued to undermine the state structure and inflict suffering upon Estonia and Estonians.

In January of 1944, Soviet forces returned to the Estonian border, which encouraged nearly 30,000 Estonian men to mobilize under Nazi Germany out of fear of another Soviet occupation but also in anticipation of the fall of Nazi Germany to the Allied forces (Raun, 2001, 159; Brüggemann and Kasekamp, 2008, 428). The Soviet advance was temporarily slowed but by August of 1944 the Nazi forces began to prepare to retreat as the Red Army had successfully conquered various cities throughout Estonia. The national leadership encouraged Estonians to enlist, “drawing parallels with the seemingly hopeless circumstances at the start of the Estonian War of Independence in 1918,” (Brüggemann and Kasekamp, 2008, 427-428). At this point, with the advancing Red Army, Estonians who had been mobilized under the Soviet occupation had been pitted against those who had joined the German forces. In September of 1944, the Soviet

forces “‘liberated’ Tallinn and crushed an attempt to restore an independent Estonian government led by surviving pre-war-era political figures,” (Brüggemann and Kasekamp, 2008, 428). The German forces then retreated in 1944 and nearly 100,000 Estonian citizens fled to Western mostly due to the memories of the deportations and repression that took place under the Soviets from 1940 to 1941.

5.4. THE SOVIET OCCUPATION OF ESTONIA: FROM 1944

With the end of World War II and the collapse of Nazi Germany, the Soviet Red Army drove the German forces out of Estonia from February to November of 1944 and Soviet rule and Sovietization were reinstated. The process of Sovietization mostly took place from 1944 to 1950 under Stalin’s leadership.

In the immediate post-war years, the Estonian Communist Party grew in numbers. By 1952 the Estonian share of the Party was at 41.5% and the majority of the high-level functionaries were Russian-Estonians and Russians (Raun, 2001, 171; Misiunas and Taagepera, 1983, 74). Reflecting Moscow’s lack of trust in Estonians, and the reluctance of Estonians to take part in pro-Soviet and communist activities (Raun, 2001, 170), former leaders and elites were often convicted for anti-communist activities and many were sent to labour camps. In March of 1950, individuals of the Party that were perceived to be “too much of a nationalist,” or failed to properly promote Soviet ideology were demoted, fired, deported, or sent to labor camps (Raun, 2001, 171-172). As a result of these actions known as the purge of “bourgeois nationalists,” the Estonian Communist Party was nearly overhauled and replaced with Moscow hardliners

It is also essential to acknowledge the anti-Soviet guerilla movement that formed with the Nazi retreat. Many Estonians soldiers that were drafted into the Waffen-SS were stranded and

took refuge in Estonian forests, becoming the “forest brethren,” also known as the “forest brothers,” (Raun, 2001, 174). The anti-Soviet guerilla movement was at its height from 1946 to 1948; however, the strength of the “forest brothers” declined in the 1950’s following a series of attacks, captures, and deportations by the Soviet forces. Then in 1955 they were promised amnesty (Raun, 2001, 174).

In Estonia post-war reconstruction mostly consisted of the heavy industrialization of the economy and the forced collectivization of agriculture (Raun, 2001, 175-178). However, some individuals were banned from joining kolkhozes⁵, Nazi collaborators, families of members of the “forest brothers,” and the kulaks⁶ were prohibited, and the “liquidation of the kulaks as a class,” was implemented (Raun, 2001, 178). It is estimated that nearly 80,000 Estonians considered kulaks were deported by the end of March 1949 (up to 12% of the Estonian rural population) (Raun, 2001, 179; Parming and Järvesoo, 1978; Taagepera, 1980, 391). In the immediate post-WWII years under Stalin's leadership, members of the German Army, the Home Guard, the “forest brothers,” their family members, the kulaks, and the “bourgeois nationalists,” were deported, drastically changing the demographics of Estonia. Moreover, nearly 180,000 non-Estonians, mostly from Russia and other republics of the Soviet Union, are estimated to have immigrated to Estonia in the later half of the 1940s (Raun, 2001, 182; Brüggemann and Kasekamp, 2008, 429). The decline of the ethnic Estonian share of the population was so sharp in the Stalinist years, significantly limiting nationalist expressions, diluting Estonian culture, and furthering the Sovietization of Estonia.

Additionally, changes to the education system were instated to fit the Soviet model,

5 Kolkhozes were collective farms under the Soviet Union that were operated by farmers and labourers in the surrounding area who were paid for their individual contributions (Raun, 2001, 152).

6 The “kulaks” were a class of Estonian farmers labeled by the Soviets. The kulaks were considered to be well-off and the Soviets wanted to liquidate their farms (Taagepera, 1980, 381).

Estonian publications were limited, religion was again discouraged, and Russian language use and Soviet propaganda were prevalent. However, after Stalin's death in 1953, the Soviet policies and system altered significantly, and they became more moderate (Raun, 2001, 185-189). Under Khrushchev, decentralization gave the Estonian Communist Party more autonomy and Johannes Käbin, the Chairman of the Supreme Soviet (1978-1983), was generally regarded as a respectable leader by the Estonian people, as he attempted to balance the demands from Moscow with national Estonian desires (Miljan, 2004, 294).

However, many of the soft cultural and national annihilation Stalinist projects continued. There were attempts to diminish Estonian language use through enforced Russian in schools, the majority of television broadcastings were also in Russian (Raun, 2001, 212-218). According to the policies of the Soviet Union, the entire Estonian social, political and economic structures, informal and formal, were reorganized and Sovietized (Miljan, 2004, 424; Ruutsoo, 1995, 168). The Soviet Union encouraged Russian immigration into Estonia, which had the effect of decreasing the native Estonian share of the population by roughly 10% from 1959 to 1979 (Raun, 2001, 207). Despite the threat to the Estonian language, culture, and identity, a collective memory and desire of the inter-war years of independence was able to withstand the occupations and the crimes, namely the mass deportations and the assault on culture and history (Raun, 2009, 529, Laar, 2004, 226-227; Bennich-Björkman, 2007).

Rein Ruutsoo argues that a collective memory of the pre-occupation period of Estonian independence, and national cultural, political, and economic autonomy helped shape a collective consciousness of the inter-war period that was called upon in the struggle for independence and then the post-communist transition (1995, 172-173; Bennich-Björkman, 2007, 330-332). The role of history and memories of the inter-war period were evidently critical in the process of regaining Estonian independence that took place decades later as they emphasized the cultural and legal

continuity of the country and nullified the periods of occupation. Based on the consensus that crimes had been committed, aggrieving Estonians, the independent state defined itself with help of the collective memory that has emphasized the illegality of the Soviet occupation and anti-communism (Brüggemann and Kasekamp, 2009, 61; Astrov, 2009, 86; Fofanova and Morozov, 2009, 27).

5.5. THE TRANSITION

It must be noted initially that transition, for the purposes of this discussion, is conceptualized as “the shift from a non-democratic regime type to a democratic one,” (de Brito et al., 2001, 5). In Estonia, the transition began to take place in the late 1980’s and culminated September 17th, 1991 with the international recognition of its independence and membership to the United Nations. The character of the transition was important in determining how the new regime and elites chose to deal with its past and which aspects of history were to be incorporated into the independent Estonian collective memory. In order to understand how these dynamics played out in Estonia, an overview of the transition is provided.

By the mid-1980’s it was becoming increasingly clear that the Soviet communist system was coming to an end on a global scale. The permissiveness of Gorbachev’s *glasnost and perestroika* provided the opportunity for Estonians to exploit the changes in the regime but also to challenge the Soviet version of history (Raun, 2001, 222; Brüggemann and Kasekamp, 2008, 428; Coser, 1992). In Estonia, Mart Laar, claims that “the first battlefield was history, where the restoration of sections which had been whitened out, mainly regarding the Stalinist crimes,” were essential to the liberation movement” (2004, 226-227). Heritage preservation groups began to form and the Estonian Heritage Society grew, establishing local factions that covered the whole country announcing a new period of national awakening (Laar, 2004, 227). In August of 1987 the

Estonian Group for the Disclosure of the Molotov-Ribbentrop Pact was formed to demonstrate against the signing of the Pact and to advocate for its nullification. Over the next few months more and more groups formed and acted seeking Estonian independence, calling for remembrance of the War of Independence (1918-1920), the Tartu Peace Treaty, and recognition of the Estonian Independence Day, February 24th 1920 (Raun, 2001, 243-245; Brüggemann and Kasekamp, 2008, 428). Journalists and historians actively sought to fill in “the blank spots of history, first and foremost commemorating the victims of the mass deportations under Stalin’s rule of terror,” (Brüggemann and Kasekamp, 2008, 428). The crisis in Estonia continued and during an assembly held April 1st and 2nd of 1988, popular and well-known Estonians criticized the Soviet system by encouraging the population to actively seek their freedom, independence, and rights (Laar, 2004, 230).

On June 4th 1988, ten thousand individuals gathered at the Tallinn Song Festival Grounds waving the blue, black, and white flags as they sang national patriotic songs that had been banned for roughly 40 years. Dubbed the "Singing Revolution," the event led to the removal of Karl Vaino, the leader of the Estonian SSR (Laar, 2004, 233). Thirteen days later, 100,000 people gathered at the same place again. Following these two mass demonstrations the authorities began to make certain concessions, most notably “the restoration of the historical memory in physical form,” (Laar, 2004, 233). This was done through the restoration of monuments to the War of Independence, and reinstatement of the blue, black and white flag signifying the reconnection of Estonians with the past and thus historical continuity (Raun, 2001, 224).

September 11th of 1988, 300,000 people gathered for an appeal for the restoration of the independence of the Estonian state, led by the Estonian Popular Front (Laar, 2004, 233). The movement continued to strengthen and eventually the Estonian Communist Party was forced to cooperate with the Estonian Popular Front and on November 16th 1988 the legislative body of

the Estonian SSR declared itself as sovereign, outraging Moscow (Laar, 2004, 234). The Committee of the Citizens of the Republic of Estonia then formed with the goal to restore the Republic of Estonia based on legal continuity and to nullify the Molotov-Ribbentrop Pact.

Based on an experimental order from Moscow, the Soviet Socialist Republic elections that were to take place on March 16th throughout the Soviet Union were to be multi-candidate in Estonia for the first time since 1940 (Taagepera, 1990, 330). The reformers had won most of the seats splitting the Estonian Communist Party (Taagepera, 1990, 336-338). Then on August 23rd 1989, a 3600 kilometer human chain between Estonia, Latvia, and Lithuania, known as “the Baltic Chain,” was formed with the aim to further pressure Moscow for their freedom and independence from the Soviet Union (Laar, 2004, 235-237).

In March of 1990, despite the previous 50 years of occupation, the Congress of Estonia and the Supreme Council confirmed the continuity of the state from 1940, before the Soviet occupation. In August 1991, the Supreme Council and Congress of Estonia decided on national independence and on September 17th 1991, Estonian independence was internationally recognized.

However, the new regime was confronted with a series of transitional challenges. Toivo U. Raun argues that Estonia “retained a historical memory of their initial two decades of independence in the interwar era...[which] could be appealed to in the post-communist transition,” and this had ultimately simplified the transitional and reconciliation processes (2001, 245). As a result, much of the rhetoric and ideas of independent Estonia were based in the idea of legal continuity, and the illegality of the Soviet Union and its illegal and political actions in the country (Tamm, 2013, 654; Pettai, 2007). The Estonian collective memory provided a sound basis for Estonian independence, contributed to the moral grounding of the new regime through its inversion to the oppressive Soviet occupiers, and was supported by the Estonian collectivity.

Applying the described theory of collective memory, the promotion of collective memory in Estonia was a product of the post-communist transitional framework that sought to reflect the future-oriented goals of the newly independent Estonia.

This overview of the historical background and the road to independence allows for an understanding as to how a particular interpretation of the past justified the transition and guided new regime in its transition. It also helps to understand why the process of transitional justice in Estonia focused and remains focused on memory re-evaluation and construction. Therefore, in order to evaluate the process of transitional justice in Estonia, and specifically the two institutes of memory, the Estonian International Commission for the Investigation of Crimes Against Humanity and its successor, the Estonian Institute of Historical Memory, requires an understanding of the nature of the oppressive regimes and the crimes committed.

The following chapter will initially detail the establishment, goals, and mandate of the Estonian International Commission for the Investigation of Crimes Against Humanity, as well as its findings. This descriptive overview of the memory institute will be followed by an analytical assessment of the Commission in terms of its success in meeting the goals of transitional justice with a focus on the collective memory that has been disseminated through its works.

6. THE ESTONIAN INTERNATIONAL COMMISSION FOR

THE INVESTIGATION OF

CRIMES AGAINST HUMANITY

6.1. ESTABLISHMENT, GOALS, AND MANDATE

The Estonian International Commission for the Investigation of Crimes Against Humanity (hereafter: Commission) was established by a presidential decision on October 2nd 1998 by the President of the Republic of Estonia, Lennart Meri (Introduction of the Estonian International Commission for the Investigation of Crimes Against Humanity, 2008, 1; hereafter: Introduction). Through Presidential designations, seven non-Estonian academics, policy analysts, and politicians from the United States, Finland, Denmark, Russia, and Germany formed the Commission. According to Anton Weiss-Wendt, the members were nominated on the basis of their “friendliness” towards Estonia (2008, 479). The “Introduction” produced by the Commission and published in 2008 serves as the mission statement of this body. It formally defines the goals and mandate of the Commission, derived from President Lennart Meri’s announcement convening the Commission.

As laid out in the Introduction, the principal goal of the Commission was “the investigation of “crimes against humanity committed against the Estonian citizens or on the territory of the Republic of Estonia during the occupation of the Soviet Union and Nazi Germany,” as well as to establish “the attendant circumstances of the crimes against humanity,

and also the relevant historical background,” (2008, 1). According to the Introduction, the Commission is to proceed from Articles 6, 7, and 8 of the Statute of the International Criminal Court of Rome, and to compile “a record sufficiently well-documented and complete that no one will be able to deny what happened or to avoid facing up to the facts,” because “double standards in the assessment of particular events,” are to be eliminated (2008, 1). However it is emphasized that the Commission is not a judicial body, thus its powers are limited, and the established record of the facts is not to launch any sort of judicial action. In order to compile an account of the crimes against humanity committed in Estonia and towards Estonians, the Commission was instructed to work on the basis of consensus where research papers by Estonian history scholars were to be analyzed and discussed by the international Commission’s members to eventually produce a report, even though producing a report is not mandated by the Introduction or the Presidential speech (Introduction, 2008; A Word of Welcome, 1999).

In order to perform such research, the hired historians were given access to all of the available Estonian and international archives (Introduction, 2008, 2). The internal working rules are otherwise not detailed in the Introduction, nor were they outlined in President Lennart Meri’s speech regarding the decision to convene this Commission. Therefore, despite being funded by the Estonian state, the Commission had a significant degree of freedom in terms of the method of its work and its relationship to other state bodies (Hiio and Maripuu, 2014). As a result of the limited detail regarding the internal functioning of the Commission, its official mandate and goals, and its relationship to the Estonian government, the final report published in 2008 – which includes the formal Introduction – cannot be regarded as a direct reflection of the expectations formulated in the initial Presidential decision. Furthermore, despite its many similarities, this

body cannot be accepted as a truth commission⁷. Unlike truth commissions, there was no formal call for victims as witnesses, nor was there cooperation from all those involved in the historical period under study, and there was not a clearly defined timeframe or requirement to produce a report at the outset. As a mechanism of transitional justice, the Estonian International Commission for the Investigation of Crimes Against Humanity is a memory institute meant to “reflect our hope in Estonia that shining the bright light of truth on some of the tragedies of the past will not only contribute to reconciliation within our society and its further reintegration into the international community of nations but also help to prevent the repetition of such tragedies elsewhere,” (Introduction of the Estonian International Commission for the Investigation of Crimes against Humanity, 2008, 1).

Following its establishment, the Commission decided to investigate the crimes against humanity committed in Estonia in three distinct historical periods, “(1) the occupation of Estonia by Soviet forces in 1940-1942, (2) the occupation of Estonia by German forces in 1941-1944, (3) the second Soviet occupation beginning in 1944,” (Introduction to the Estonian International Commission for the Investigation of Crimes Against Humanity, 2008, 2). However, there is no clearly defined set of events or limit as to what is to be investigated regarding the Soviet occupation beginning in 1944. It is clear that it ends with the proclamation of Estonian independence, yet the actual set of historical events is not explicitly stated, whereas a truth commission would temporally and spatially define the historical events under study.

It must also be noted that although the Commission was established as non-judicial body, the basis of its evaluation of the past is provided by the Crimes of Genocide, War Crimes, Crimes of Aggression, and Crimes Against Humanity as laid out in the Statute of the International

7 A truth commission based on Hayner's definition is detailed in Section 3.3.2.1.

Criminal Court of Rome (Introduction, 2008, 1-2; Statement, 1998), implying the criminality of the occupying regimes. From 2001 to 2008, the Commission published three reports, one per period of occupation, detailing the historical background of each occupation and the criminal events that took place under the occupying regimes.

The following section will provide a descriptive overview of these three reports. This overview will be followed by an analysis of the Commission's work, relating the findings to the specifically stated goals as well as the universal and normative goals of transitional justice.

6.2 PRESENTATION OF THE COMMISSION'S REPORT

6.2.1. THE SOVIET OCCUPATION OF ESTONIA: 1940-1941

At the outset, the Report of the Estonian International Commission for Investigation of Crimes Against Humanity (hereafter: Report, 2004) states that the annexation of Estonia in 1940 was illegal. Furthermore, the Commission attributes responsibility to "those citizens of the Republic of Estonia who together with the Soviet officials prepared for and carried out the take-over of power," identifying six particular criminal events that fall under Articles 7 and 8 of the Rome Statute, "Crimes Against Humanity," and "War Crimes," (Report, 2004, 1- 10).

The first crime identified by the Commission was the arrest of an estimated 300 plus Estonians from June to August of 1940. Alleged reasons for arrest included repressing the labour movement, activity against the Soviet Union, and being associated with the arrests and convictions of Estonian communists since 1918 (Report, 2004, 5-6). Military tribunals of the People's Commissariat of Internal Affairs of the USSR (NKVD) or their Special Counsel made many of the decisions regarding these arrests (Report, 2004, 6). Some individuals were taken to

Leningrad or Moscow for trial, some were sent to the prison camps, some were executed, and some were imprisoned. These arrests are deemed criminal by the Commission and are listed as "the Prosecution and Conviction of Citizens and Residents of the Republic of Estonia" (Report, 2004, 6).

The second listed crime identified by the Commission, "the Imprisonment of Citizens and Residents of the Republic of Estonia," refers to the estimated 1,600 Estonians, politicians, business people, military members, active members of the Defense League, and prosperous farmers that were either sent to prison camps in the USSR or executed from 1940 to 1941 (Report, 2004, 6).

According to a decree issued by the Central Committee of the CPSU and the Council of the People's Commissars of the USSR, in the month of June 1941, well over 10,000 people were deported from Estonia (Report, 2004, 6-7). These deportations of men, women, and children mark the third crime, which the Commission identifies as, "the Deportation of Citizens and Residents of the Republic of Estonia."

The publication notes the fourth crime under the Soviet occupation (1940-1941) as "the Forced Transfer of Estonian Men to the Soviet Union in July and August of 1941," whereby reservists and men born during the years of the War of Independence, and shortly thereafter (1919-1922), were sent to join the Red Army. A total of 50,000 men were mobilized, 32,000-33,000 were sent to the USSR, and 3,000 died on the way (Report, 2004, 7).

In the summer of 1941, 25,000 individuals were evacuated to the Soviet Union, some under threat of execution or imprisonment, and some out of fear of the looming German occupation. These evacuations are listed as "the Forced Evacuation of Estonian Citizens and Residents to the Soviet Union in the summer of 1941."

The final criminal event listed by the Commission is "the Killing of Estonian Citizens and

Residents in the summer and autumn of 1941 by the NKGB, NKVD Destruction Battalions and Retreating Red Army and Baltic Naval Fleet Units." Over 2000 people were killed, mostly the "forest brothers" who had resisted the NKVD, NKGB (the People's Commissariat for State Security), and the Red Army through guerilla warfare (Raun, 2001, 174).

Based on Article 7 of the Rome Statute of the International Criminal Court, these six crimes are considered crimes against humanity because they were part of "a widespread or systemic attack directed against [a] civilian population," and some are "considered war crimes according to Article 8 of the Rome Statute of the International Criminal Court" (2004, 8). The Report concludes that responsibility for these crimes lies with the Soviet leadership, "whose objective was the rapid incorporation of Estonia into the USSR and the elimination of social groups and individuals that did not conform to the ideology of the USSR," (2004, 10). In conclusion,

"the position of the Commission is that no ideology can justify the imprisonment, maiming and execution of thousands of people. The activity of citizens of the Republic of Estonia in the service of their country and people, in accordance with existing laws of Estonia before the Soviet occupation, could not under any circumstance be grounds for their subsequent conviction according to the laws of the Soviet Union," of whose occupation of Estonia was illegitimate (2004, 1-10).

Accordingly, a multitude of crimes were committed in Estonia and the events that took place were not in the interest of Estonia and its people, but were in the interest of the Soviet Union and its expansionist goals (2004, 4). The Commission emphasizes the criminality of the Soviets, furthermore it is able to single out those responsible while also identifying the involvement of broader Soviet-led institutions, further demonstrating the oppression Estonia suffered from 1940 to 1941 under its illegal annexation by the Soviet Union.

6.2.2. THE GERMAN OCCUPATION OF ESTONIA: 1941-1944

According to the Commission's publication regarding the German invasion of the Soviet Union and the occupation of Estonia, five crimes took place that are deemed genocide, crimes against humanity, and war crimes.

In relation to the Holocaust, the report identifies three sub-set criminal events, "the Killing of Estonian Jews," "the Killing of Foreign Jews on the Territory of Estonia," and "the Participation of Estonian Military Units and Police Battalions in Towns and Transit Camps Outside Estonia, and at Labour and Concentration Camps in Estonia, while Acts of Genocide or Crimes Against Humanity Took Place Involving the Killing or Deportation of Jews and Other Civilians, in which the Units Played a Variety of Roles." According to the Report, about 75% of Estonia's Jewish community fled the country in fear of the Germans, although roughly 950-1,000 were killed. An unknown number of foreign Jews were killed in various camps established throughout Estonian territory and records from the Soviet trials found a number of Estonian battalions involved in the murdering of Jewish citizens in Estonia, Belarus, and Poland (Estonian International Commission for the Investigation of Crimes Against Humanity, 2001, 2; hereafter: Report, 2001). The Report's details regarding the remaining four established crimes are sparse. The attitude and findings of the Commission regarding this particular period of German occupation raise many questions, which will be returned to in the analytical section that follows later.

For simplicity, and because their title offers adequate information, the remaining identified criminal events regarding this period will be listed as such: "the Killing of (Estonian and non-Estonian) Roma in Estonia; the Killing of at Least a Further 7000 People, Including Approximately 6000 Ethnic Estonians; the Killing of Soviet Prisoners of War; and the Imposition

of Forced Slave Labour" (Report, 2001, 3). In conclusion the Commission's Report identifies the Estonian people's "confusion of the first two months [of the German occupation]," as follows: "the German invasion initially appeared to many as a form of liberation," particularly after "the year-long Soviet occupation...[which] caused immense damage to Estonia's institutions and to her citizens, in particular, the mass deportations of June 1941," (2001, 6). The Commission considers the crimes committed under German occupation within the context of the former Soviet occupation, and emphasizes the continued anti-communism and dominant anti-Soviet feelings of Estonian society (2001, 7).

The Commission acknowledges evidence regarding the involvement of Estonians in the arrests and killings of Estonian Jews, as well as in the interrogations of suspects deemed to be opponents of Nazi Germany, in particular Estonians that were members of the Omakaitse who had killed communists, and the 36th Police Battalion that participated in the shooting of Jews in Nowogródel, Belarus (2001, 4-5). However, it concludes that "it is not reasonable to assign responsibility by virtue of their positions," and "neither the dates mentioned nor the testimony given, directly implicates Estonian units in these actions," (2001, 4-5). There were no trials or prosecutions of individuals who had been named in this Report.

In the concluding portion, the Commission refers back to the difficulty of Estonians to "take a side" as there "was very little middle ground," because "resistance to the Germans would inevitably be construed as support for Communism and the Soviet Union," (2001, 7). In the end, "it is unjust that an entire nation should be criminalized because of the actions of some of its citizens; but it is equally unjust that its criminals should be able to shelter behind a cloak of victimhood," (Report, 2001, 7). Therefore, the Report regarding the German occupation of Estonia from 1941-1944 accepts the criminality of the regime, the involvement of Estonians, and in the end returns to the present importance of the rule of law in acknowledging and condemning

these crimes.

6.2.3. THE SOVIET OCCUPATION OF ESTONIA: FROM 1944

This part of the Report notes the continuation of the Soviet regime's repression after 1944 (2008, 4). The continuity was justified by the Soviet regime's claim that the Estonian governments after the War of Independence were illegitimate, despite its signing of the Tartu Peace Treaty (The Estonian International commission for the Investigation of Crimes Against Humanity, 2008, 4; hereafter: Report, 2008). Based on this rationale, former Estonian leaders were convicted for anti-communist activities and many were sent to Gulag labour camps. The Commission identifies the first crime as "the Continuation of the Prosecution and Conviction of Previous Estonian Leaders." In 1944 the Soviets had continued with the punishment and arrests of Estonians who had not been convicted under the first occupation. Toivo Raun, Estonian historian, refers to these activities as the purge of the "bourgeois nationalists," (2004, 171), which had the greatest impact on the Estonian government and leadership structure. As part of this criminal event, the Commission refers back to the falsified elections of July 1940 as well as the illegitimate nature of the occupation itself, re-emphasizing the illegality of the Soviet occupation and its criminal activities in 1940-1940 and that the occupation of 1944 was simply a continuation of this criminal period.

Similarly, the second crime regards "the Prosecution and Conviction of Members of the Otto Tief Government," a government seeking to regain independence of Estonia in September 1944 (Report, 2008, 5). The majority of those involved in this movement were arrested and imprisoned, exiled, or executed by the Soviet Red Army.

The third crime listed in the Report, "the Continuation of Prosecution and Conviction of

State Officials of the Republic of Estonia," identifies the arrests of high to mid-level state officials in the late 1940s and early 1950s for reasons that were "arbitrary and based on purely circumstantial evidence," based on the Criminal Code of the Russian SFSR (2008, 6). The Report also notes that the Soviet investigations of these individuals were not to determine the truth, and that these investigations were in line with the ideological preferences outlined in the Criminal Code of the Russian SFSR (2008, 6).

The fourth noted criminal event, "the Continuation of the Prosecution and Conviction of Members of the Local Government Authorities," is self-explanatory and the details are quite similar to those of the crimes described so far.

The fifth crime, "the Campaign Against the Estonian Resistance Movement," regards the resistance fighters that were known as the "forest brothers." It is estimated that well over 2000 were killed and thousands were arrested during the period between the second Soviet occupation in 1944 until 1955 when an amnesty was promised (Report 2008, 6; Misiunas and Taagepera, 1983, 89).

"The Treatment of Estonian Prisoners of War and Other 'Traitors to the Motherland'" is the sixth criminal event entailing the "detention, screening, and interrogation of Soviet citizens who had 'permitted themselves,' to remain in German-occupied territory" (Report, 2008, 6). Based on the previously mentioned Soviet rationale that delegitimized previous governments in Estonia, and the fact that the Molotov-Ribbentrop Pact allowed for Soviet interference without German involvement, all Estonians who stayed in Estonia throughout the three years under German occupation were thus subject to this process. According to the Report, all individuals were required to submit a questionnaire detailing their pre-war and wartime activities, some were immediately arrested and sent to trial and some were sent to other investigative units (2008, 7). Estonian Prisoners of War were returned to Estonia but were sent to work in labour bases for

industrial-military construction, for post-war reconstruction, (Report, 2008, 8; Raun, 2001, 175).

The seventh reported criminal event is "the Treatment of Arrested People Under Preliminary Investigation and Before the Tribunals," which regards the inhumane treatment of individuals kept in over-populated prisons while waiting for further investigation, often including some form of physical violence to induce a confession (Report, 2008, 8). Moreover, the Report states that from 1942-1990 37,000 Estonians were sentenced for "political" crimes based on the Soviet Criminal Code, and the most common punishments were 10-25 years of forced labour in the Gulag camps and the death penalty (with the exception of 1947-1950 when the death penalty was abolished) (2008, 8).

In continuation with the occupation of 1940, deportations restarted. In August 1944 over 400 people with German origin were deported, in March 1949 over 20,000 family members and supporters of, as well as resistance fighters themselves were deported, and in April 1951, 353 Jehovah's Witnesses were deported (Report, 2008, 9). The Commission regards all three instances as systematic attempts to annihilate an entire population.

The ninth crime includes twelve "Institutions of Soviet Repression" that the Report divides into three categories: operational state security organs, tribunal and court institutions, and institutions of imprisonment and forced labour (Report, 2008, 9-10).

"Mobilisation of Estonian men into the Red Army late in World War II," regards the estimated 10,000 men who experienced forced deployment, marking the tenth criminal event under the Soviet occupation.

The final crime is "the Post-1953 Repression – the Commuting of Sentences, but the Continuation for some Estonians of Enforced Residence in Exile" – entailing the release of prisoners and deportees from the Gulag camps after Stalin's death in 1953. The Report notes the slow and complex process of return, which often took years, and once returned, the limited

freedoms of former prisoners (2008, 11).

In the assessment of responsibility, the Report attributes responsibility to the Soviet institutions that subordinated local bodies and carried out crimes against humanity, but it also names individuals at the head of these organizations. Again, as a non-judicial body, it is out of scope for the Commission to carry out judicial activities against these individuals. Moreover, as part of the conclusion the Report notes that after Stalin's death in 1953, the crimes committed under the Soviet regime in Estonia were deemed to be less atrocious and physically violent. Thus, the Rome Statute's definition of "crimes against humanity," no longer applied even though repression continued after 1953 until independence was restored (2008, 14). Therefore, Stalin's death informally marks the end of the work of the Estonian International Commission for the Investigation of Crimes Against Humanity because it was based on the Rome Statute, specifically Crimes Against Humanity, War Crimes, and Crimes of Genocide, and these standards of international law were no longer applicable.

The following section will discuss the three reports produced by the Estonian International Commission for the Investigation of Crimes Against Humanity as a whole in terms of their ability to meet the broad goals of transitional justice through the four obligations of the state proposed by Juan Mendez⁸.

6.3. ANALYSIS AND EVALUATION OF THE COMMISSION'S REPORT

6.3.1. APPROACH

All together, the works of the Commission regarding the Soviet occupation of 1940-1941,

⁸ See section 3.1. for Juan Mendez' proposed obligations to the state in the process of fulfilling the goals of transitional justice.

the German occupation of 1941-1944, and the Soviet occupation from 1944, consist of describing the selected crimes and naming wrongdoers. These reports serve to establish a record of what happened, providing Estonians with knowledge of the criminal past. Regarding Mendez' proposed responsibilities of the state to meet the normative and universal goals of transitional justice, the works of the Commission will be considered in terms of its role in fulfilling these four obligations in conjunction with its stated goals. This allows for the most effective analysis of the Commission's success as a mechanism of transitional justice. Consequently, both the international normative discourse and the context-specific historical and transitional constraints are considered in the analysis and evaluation. The purpose of considering the universal normative features of transitional justice is that they allow for a criteria judging right from wrong use of collective memory.

6.3.2. GRANTING VICTIMS THE RIGHT TO KNOW

The Commission has indisputably met the second responsibility proposed by Mendez, which is to “grant victims the right to know the truth,” (1997b, 12). According to this criterion, the independent Estonian state is duty-bound to investigate and establish a record of the past regarding the injustices committed towards Estonian individuals and society, as well as those on Estonian territory (1997, 12). Ultimately, the Commission's focus on uncovering the crimes against humanity has had the effect of criminalizing the previous regimes, distinguishing the new regime as one based on the rule of law, equal worth and respect of all people. The Commission has worked on the basis of consensus to construct a dominant narrative of the past based on both the collected historical knowledge and gathered memories of the difficult past. This process has made the knowledge of what happened accessible to victims, their descendants, and the whole

society, thus delegitimizing the discourse of the institutionalized lie that had ruled in the previous period. In doing so, it has also contributed towards the collective memory of the harm, suffering, and injustice in Estonia at the hands of the oppressive occupying powers, which arguably serves to emphasize both the moral and democratic-political change brought about by independence.

6.3.3. REDRESSING INJUSTICE

The Commission has been less successful in meeting Mendez' first obligation, the need for justice and the fourth obligation, to remove perpetrators from positions in public office (1997b, 12). As mentioned, the Commission's Introduction explicitly states that it is a non-judicial body that is "not trying to compile a set of facts to launch judicial actions against anyone or any institution," (Introduction, 2008, 1). Yet, in each report the Commission attributes responsibility to individuals involved in the criminal events deemed to be crimes against humanity, war crimes, and genocide. After compiling the Report, it then became up to the Estonian Internal Security Service, a government agency, to investigate offenses and bring suspected individuals to trial if that should be the case (Hiio and Maripuu, 2014; Kaitsepolitseiamet, 2014). Certainly, the findings of the Commission may be used for investigation and prosecution, however, it is not part of the stated responsibilities of the Commission to initiate criminal proceedings, nor is it up to the Commission to compile a set of facts for such judicial action (Introduction, 2008, 1; Hiio and Maripuu, 2014). Clearly, without judicial power, the Commission does not meet Mendez' proposed obligations for the state to remove perpetrators from positions of public office or to persecute and punish those responsible for the crimes.

However it must be noted that some of the individuals named in the three reports have

been prosecuted for crimes against humanity. For instance, Vassili Riis was prosecuted for the arrest and deportation of 1062 citizens in Estonia in 1941, although he died before the proceedings were finalized and Idel Jakobson also died but was accused for the repression of at least 1800 people from 1940-1941 (Kaitsepolitseiamet, 2014). Similarly, individuals singled out for crimes against humanity under the Soviet occupation of Estonia from 1944 have also been tried (Kaitsepolitseiamet, 2014).

The Commission and the Report regarding the Soviet occupation from 1944 have been cited and referenced in criminal proceedings carried out against some of the named perpetrators, including the European Court of Human Rights vs. Kolk and Kislyiy (European Court of Human Rights, 2006), and the European Court of Human Rights vs. Penart (European Court of Human Rights, 2006). Additionally, a few of the named individuals were investigated by the Estonian Internal Security Service (Kaitsepolitseiamet, 2014). Estonian and international bodies have utilized the knowledge presented by the Commission because it explicitly attributes responsibility for the crimes against humanity committed towards Estonians and in Estonia, based on the Rome Statute, despite President Lennart Meri's claim that the Commission's role is not judicial or prosecutorial.

Due to the nature of the content of the reports and the explicit attribution of responsibility, the Commission does well to criminalize both periods of Soviet occupation, which has the effect of distinguishing the new regime through moral inversion (Mark, 2010, 31). This perception is largely in agreement with the argument that the collective memory of post-communist Estonia has been based on the dominant and agreed upon understanding that Estonia suffered under the criminal Soviet rule (Brüggemann and Kasekamp, 2008, 426; Fofanova and Morozov, 2009, 27; Onken, 2009, 40; Astrov, 2009, 86.).

As discussed, no trials or proceedings resulted from the Report published regarding the

German Occupation of Estonia in 1941-1944. However, controversy surrounding the 36th Police Battalion, the involvement of Estonians in the deportation and killing of Jews and opponents to the Nazi regime, as well as the fact that this Report was published in 2001, hints of a possibility for future action. Toomas Hiio and Meelis Maripuu are also of this belief, and as time passes, more and more evidence is collected, allowing for more extensive research and the potential for new understanding of the criminal past (2014). Establishing a thorough account is a primary goal of memory institutes seeking to achieve the broad goals of transitional justice. The controversial elements of this period of German occupation will be discussed further in section 6.3.5.

Certainly processes of retroactive justice are complex and difficult due to the temporal distance between the present and the time of occupation. It is therefore out of scope and near impossible to effectively indict and remove those responsible from public office for crimes that occurred in 1940 and 1941, particularly as many have died or were too ill for proceedings (Kaitsepolitseiamet, 2014; Hiio and Maripuu, 2014).

Additionally, retroactive justice is contestable in and of itself due to the debated legitimacy of the new democratic regime to implement justice regarding the previous regimes inability to follow the rule of law (Kaminski and Nalepa, 2006, 388). Toomas Hiio and Meelis Maripuu, board members of the two Institutes, emphasized that the end of the Commission's operations were due to the inapplicability of the original framework, based on Crimes Against Humanity (2014). Despite the works of the Commission being based on international legal grounds – Article 7 of the Rome Statute, Crimes Against Humanity – which arguably facilitates and legitimizes retroactive justice (Kaminski and Nalepa, 2006), Hiio and Maripuu emphasize the complexity of this sort of evaluative historical research and the importance of leaving present political motives out of the research itself (2014). This notion is particularly relevant considering the roles the Report and the Commission have recently played in international and domestic court

proceedings regarding the findings. Arguably, the non-judicial nature of the Commission has been somewhat confused, making its efforts and aims to objectively establish an account of the past more ambiguous and multifarious.

By identifying individuals responsible on the basis of historical research, the Commission has taken a stance regarding the possible narratives put forth, thus providing a blueprint for establishing a dominant account of the past. A published record and attribution of responsibility for the crimes against humanity has had the effect of dismissing counter-narratives, which is also a stated goal of the Commission (Introduction, 2008, 1), and simultaneously constructs a collective memory.

6.3.4. REPARATIONS

The third state responsibility listed by Mendez is to grant the victims some form of reparation for the harms done, be it monetary, recognition, or an apology (1997b, 12). Certainly, research and publications cannot explicitly serve as a form of material reparation or compensation. With this in mind, the reports produced by the Commission can only allow for recognition and acknowledgement by detailing the criminal events, the historical background, the context, and the attribution of responsibility in the context of reparation. Through its works, the Commission has certainly done so. Additionally, Mendez' identifies reparation as a means of recognizing the worth and dignity of the victims as human beings (1997b, 12). The language used throughout the Report consistently conveys this message. For example, Soviet arrests of Estonians for the "activity of citizens of the Republic of Estonia in the service of their country and people," implies the resilience of Estonians to fight for their country and dignity (Report, 2004, 10). In reference to the possibility of collaboration with Nazi Germany, "we believe that

many of these men taking the only action they believed possible," (Report, 2001, 7) emphasizes the non-rationality of human nature. The language of the Report does well to acknowledge and recognize the suffering of Estonians, all the while emphasizing their efforts to restore Estonian independence. This arguably satisfies the need of victims to have their dignity and worth restored after the years of human rights violations. Therefore, the Report serves as a means of recognition and reconciliation for the victims, meeting at a normative and symbolic levels Mendez' third obligation for a state, reparation.

6.3.5. POSSIBILITY OF DENIAL

Thus far, it is clear that the Commission has decisively contributed to producing a particular memory of the country's recent past, mostly centered around the criminality of the Soviet occupations, as evidenced through the listed crimes committed. Entrenching this particular way of remembrance, the Commission was able to emphasize the legal, political, and moral contrast between the old regimes and the new one, which is to be based on the rule of law, democracy, respect for equal rights, and the international democratic ethos. However, with regards to the period of German occupation, there are points of contention in the works of the Commission and within the Report itself.

As mentioned, the involvement of Estonians in identified criminal events is acknowledged throughout the Report. However, the actions of the 36th Police Battalion have been increasingly controversial (Hiio and Maripuu, 2014; Nollendorfs et al., 2005, 109; Kopecek, 2008, 229). Additionally, there were no trials or prosecutions of individuals named in this Report. However, the Estonian Security Police initiated an investigation into an Estonian, Harry Männil, after Efraim Zuroff, a prominent historian and the director of the Simon Wiesenthal Center

claimed Männil killed hundreds of Jewish individuals in 1941 and 1942 (Simon Wiesenthal Center, 2006). After a five-year investigation process the Estonian Security Police as well as the Commission, concluded that there was no concrete evidence regarding Männil's participation in war crimes, (2001, 3-7; Kaitsepolitseiamet, 2014). Ultimately, the findings detailed in the Report and the attribution of responsibility for the crimes committed under the German occupation have remained controversial.

Additionally, the crimes committed during the German occupation are considered in the context of the former Soviet occupation and there is a repeated emphasis on the anti-Soviet and anti-communist attitudes throughout. The extensive references to the repression of Estonians by the Soviets that occurred prior to the Nazi occupation contextualizes the period of German occupation in Estonia, and further stresses the criminality of the Soviets while minimizing the period of German occupation and the criminal activity that took place. Moreover, the lack of detail regarding the crimes committed, relative to those of the Soviet occupation of 1940-1941 is curious, although the Commission refers to the limited accessible material (Report, 2001, 5). Attributing sparse details of one period of occupation to a lack of evidence hints towards Stanley Cohen's concept of historical denial, "a matter of memory, forgetting and repression," it is about "remembering only what we want to remember," (Cohen, 2001, 12). Historical denial is not necessarily planned, but may result from gradual ignorance or the avoidance of past atrocities, leading to a black hole of historical knowledge (Cohen, 2001, 12).

Arguably, the criminal events took place roughly 65 years ago, the majority of the Estonian Jewish population left prior to the German occupation (Report, 2001, 2), allowing for a natural black hole of knowledge (Cohen, 2001, 12). Thus, it may be difficult to properly research with such a temporal gap (Hiio and Maripuu, 2014). Therefore, historical denial is plausible. Still, when considering the collective memory that has so far been produced through the memory

institute and its Report – to criminalize the Soviet regime and emphasize the moral high ground of post-communist Estonia – the limited details regarding the German occupation and the near dismissal of Estonian involvement contribute to cultural denial. Cultural denial has been perpetuated in the sense that Estonian society has chosen to maintain some degree of silence regarding this period in order maintain the dominant narrative of the past, characterized by Soviet evil (Cohen, 2001, 11; Brüggemann and Kasekamp, 2009, 61; Astrov, 2009, 86). Although cultural and historical denial do not necessarily imply deliberative manipulation of facts and memory, they rather tend to misinterpret or ignore past and present realities (Cohen, 2001, 7-13). The potential political and social ramifications of denial in terms of meeting the goals of transitional justice are quite possibly far-reaching. Denial may have the effect of denying victims their right to know the truth of what happened, for victims to receive reparations, and to bring the perpetrators to justice, thus jeopardizing the realization of the broad and universally agreed upon goals of transitional justice that are based in the rule of law, equal worth and respect for all individuals.

The portion of the Report regarding the German occupation of Estonia from 1941 to 1944 has been somewhat controversial and must be reconsidered to ensure that cultural or historical denial is not taking place in order to further Estonia's transitional justice process.

7. THE ESTONIAN INSTITUTE OF HISTORICAL MEMORY

7.1. ESTABLISHMENT, GOALS, AND MANDATE

Through a Presidential decision, the Estonian Institute of Historical Memory (hereafter: the Institute) was founded in 2008 by President Toomas Hendrik Illves, replacing the International Commission for the Investigation of Crimes Against Humanity. The Institute is composed of Estonian researchers who are supervised by an International Committee of experts in human rights and political repression (Mission Statement, 2008). The Committee decides on research procedures, topics, grants, and final publications, and then "the Committee will draw its own final conclusions based on the research papers it has approved," regarding the post-Stalin years of Soviet occupation in Estonia (Mission Statement, 2008).

According to the published Mission Statement, the Estonian Institute of Historical Memory aims to expand on the works of the Estonian International Commission for the Investigation of Crimes Against Humanity by "investigating violations of human rights committed in the Soviet period which do not fall under the legal definition of crimes against humanity," (Mission Statement, 2008). As a standard for evaluation, this Institute has adopted the Universal Declaration of Human Rights as a basis to determine to what extent the human rights of Estonians were violated under Soviet rule. The Institute seeks to contribute to international and domestic understandings of the Soviet occupation, affecting all of Central and Eastern Europe pre-1991 and this objective is to be achieved by expanding the collection of individual memories.

Ultimately, the task of the Institute is to "establish facts and circumstances which

represent violations of human rights,” as part of its “obligation to the citizens of Estonia, so that they may better understand what they themselves or their parents and grandparents endured under Soviet rule,” (Mission Statement, 2008). The Mission Statement emphasizes the non-ideological and non-judiciary nature of the Institute. The powers of the Institute as well as its relationship to other bodies of the Estonian state are not specified. There is no formally defined timeframe for its operations, nor is there a requirement to produce a report or findings. This body is therefore distinct from a truth commission despite the analogous aim to establish a record of the past. The Estonian Institute of Historical Memory is thus a memory institute, as it evaluates the past without the necessary cooperation of the perpetrators (Mission Statement, 2008; Marks, 2010). The following section will analyze the Institute and its works.

7.2. ANALYSIS OF THE ESTONIAN INSTITUTE OF HISTORICAL MEMORY

The Institute has yet to produce a finalized report. However, in its collection of memories necessary to evaluate the Soviet occupation in terms of the regime’s violations of international law, the Institute hopes to have the effect of demonstrating that human rights violations took place, thereby emphasizing the oppressive and criminal nature of the Soviet Union. This collection of memories will also distinguish the independent Estonia as legitimate, democratic, and accountable. This function ties directly to Mark’s definition of a memory institute that has so far been applied throughout this paper (2010). According to Meelis Maripuu and Toomas Hiio, board members of the Estonian Institute of Historical Memory, the Institute hopes to further uncover details of the crimes during this period of occupation on the basis of international human rights law (2014). Furthermore, by uncovering more and more information regarding the crimes committed in the post-Stalin era, the Institute will contribute to the establishment of a collective memory regarding the more recent past.

As the works of this institute are ongoing, its success in meeting the goals of transitional justice cannot yet be assessed. However, in comparison to the Commission, the Institute's goals are much more oriented towards the international aspect of transitional justice. Perhaps this is a direct reflection of the emphasis on the international democratic ethos and the normative elements of the transitional justice discourse (Forsberg, 2003, 65; Teitel, 2003, 87), as well as the mounting international pressure on Estonia to deal with its past, specifically in reference to the period of German occupation (Kott, 2007, 321; Brüggemann and Kasekamp, 2008, 437; Onken, 2007, 110). Evidently, present circumstances directly shape and constrain the process of transitional justice and the choice of approaches within (Elster, 2004). The universal and normative goals of the Estonian Institute of Historical Memory are clear. Simultaneously the Institute seeks to create a coherent and dominant narrative of the past, entrenching the Estonian collective memory that has been established through previous works regarding the periods of occupation (Mission Statement, 2008). The role of history and collective memory in Estonia's process of transitional justice, specifically through these two institutes of memory has undeniably been formative in its independence.

This successor institution is extremely important; Toomas Hiio and Meelis Maripuu emphasized the fact that the works of the Estonian International Commission for the Investigation of Crimes Against Humanity are likely outdated (2014). Considering the three reports were published in 2001, 2004, and 2008, new information has been uncovered and previous conclusions have been challenged, particularly with regards to the German occupation. As a result, amendments to the initially established and dominant narrative created by the Commission need to be addressed. As discussed, collective memory of the past is a reflection of what is deemed to be important and relevant in the present and for the future of the society (Halbwachs, 1950; Assmann and Czaplicka, 1995). Thus, the collective memory of the recent

Estonian past may change as a result of the new research, as well as the nation's changing conditions.

As part of Estonia's transitional process, the newly independent regime was confronted with the need to deal with the burdened legacies of its past and establish a record of what had happened. As a result, the Estonian International Commission for the Investigation of Crimes Against Humanity was charged with this task almost 20 years ago. As its successor body, the Estonian Institute of Historical Memory and its eventual publications will be highly relevant for analysis of Estonia's experience with transitional justice as it will further contribute to the production of the Estonian collective memory and also aims to meet certain normative goals of transitional justice. Namely, this institute of memory seeks to contribute to international understanding of the crimes committed under the Soviet Union, thereby granting victims the right to know what happened and also serving as a form of reparation. Given more time, further analysis of the Institution as a mechanism of transitional justice is thus warranted.

CONCLUSION

From the outset, this thesis has sought to evaluate Estonia's experience and success with transitional justice, a process in which a political regime legally confronts its criminal past. However, in recent years transitional justice has increasingly been associated with the broader transitional project of building a democracy based on the internationally respected rule of law, notions of equal respect for all, and accountability. Such normative concerns, defined by the international democratic ethos and international human rights law, have arguably provided a framework and basis for new states seeking to join to the international democratic order, as many post-communist states desired. In Estonia, the process of transitional justice has been defined in relation to the need to re-establish the state as independent and distinct from the predecessor, who had illegally occupied and committed crimes. In order to do so, a particular collective memory of the past has been constructed and utilized in various ways in order to achieve the universal normative goals of transitional justice.

According to Maurice Halbwachs, individual memories are to be understood in terms of the collective as the individual memories transcend into the collectivity due to interaction, communication, and activity between the individuals, constantly shaping and framing memories (1950). However, collective memory is often constructed and influenced by “institutional memory,” which is meant to portray a very specific understanding of the past that has been defined by the present goals and circumstance. Therefore, collective memory is often constructed through a process of historical selectivity and interpretation.

In Estonia, establishing the collective memory of the past was important, the Soviet party-state had monopolized memory, suppressed the population, and committed crimes that were

often clandestine. As a result, there was a gaping hole of knowledge that the transitional regime sought to fill. As part of Estonia's transition, the idea of reclaiming both its independence and history of occupations was significant. Moreover, individuals were encouraged to revive their memories of the past; heritage groups formed seeking to uncover the clandestine crimes and establish an understanding of what had come before. According to Mart Laar, history was one of the first battlegrounds in the fight against the Soviet Union (2004, 226-227).

In order to establish a record of the past, Estonia adopted six mechanisms of transitional justice: victim rehabilitation, property restitution, the written oath of conscience, revealing the names of former security agents, prosecuting crimes against humanity and symbolic justice. This multifaceted approach was selected to help the independent regime achieve the broad, universal, normative goals of transitional justice based on the international democratic ethos, all the while, taking into consideration the transitional and local context. However, these mechanisms have not been entirely successful, they were delayed in their implementation, have been limited in scope, and some have been controversial. Additionally, they were predominantly focused on criminalizing the Soviet regime as the collective memory of the Estonian past has been predicated on the notion that the Soviet occupation was illegitimate. Therefore, this basis for dealing with the past was largely uncontested amongst Estonians in the transitional and post-transition years. Evidently, the collective memory of Soviet criminality of the past has thus far played a predominant role in Estonia's experience with transitional justice.

As an additional measure, former President H.E. Lennart Meri convened the Estonian International Commission for the Investigation of Crimes Against Humanity, which is regarded as a memory institute. Despite the similarities to truth commissions, memory institutes are distinct and often have the effect of distinguishing the new regime from the previous, defined by its criminality and oppression. After a close reading and evaluation of the Commissions three

reports, regarding the Soviet period of occupation of 1940-1941, the German occupation of 1941-1944, and the Soviet occupation from 1944, it is evident that there was an effort by the Commission to criminalize the previous regimes. References to the illegality of the Soviet occupation are frequent, the criminal events are well-documented and detailed, and attribution of responsibility to the Soviet Union, its institutions, and leaders is clear regarding both periods of occupation. This has the effect of emphasizing and portraying the independent, democratic, and moral Estonia that is based on the rule of law.

Regarding the occupation of Estonia by Nazi-Germany, the details regarding the criminal events reported by the Commission are relatively sparse, the German occupation is framed within the context of the Soviet occupations, and there is repeated emphasis to the confusion Estonians experienced in the first few months of German occupation. Moreover, evidence of Estonian collaboration is largely dismissed and the Commission points to the lack of information and evidence regarding this period. As discussed, this perhaps implies some form of denial.

Broadly speaking, the Estonian International Commission for the Investigation of Crimes Against Humanity has established a particular understanding of Estonia's past that operates within the framework of the independent nation understood through its moral inversion to the predecessor.

In order to evaluate the Commission as a mechanism of transitional justice, Juan Mendez' proposed obligations for a state to achieve the goals of transitional justice have been used as a benchmark of analysis. Mendez' obligations serve as criteria in order to judge whether collective memory has been legitimately used in the broader process of transitional justice. The Commission has granted the victims the right to know what happened, however the likelihood of bias in the process of establishing a record of the past that has been predicated on the criminality of the previous regime must be taken into consideration. Through acknowledgement of the past,

the reports serve as a means of recognition and reconciliation, thereby meeting the third obligation to grant victims some form of reparation. Mendez' first and fourth obligations revolve around bringing the perpetrators to justice through trials and removal from positions of public office. Despite the Commission being a non-judicial body, it does well to identify the perpetrators and attribute responsibility for the crimes committed, as a result, there is a clear line of accountability which may be acted upon. Regarding both periods of Soviet occupation, trials and investigations have been initiated against named individuals in the Report. Moreover, international and domestic judicial bodies have referenced the Commission and its Report. Therefore, its functions have arguably been somewhat confused, as a non-judicial body it has been useful in many judicial activities. In conclusion, the Commission, as a memory institute, has certainly contributed towards the general aims of transitional justice.

However, the Estonian International Commission for the Investigation of Crimes Against Humanity completed its work in 2008 and has been succeeded by the Estonian Institute of Historical Memory which is still in operation. The Institute is focused on establishing to what extent human rights had been violated under the second Soviet occupation in Estonia. It is therefore likely that the Estonian collective memory that has so far been based on the criminality of the Soviet Union will continue to be produced. This continued focus on Soviet criminality is particularly likely because this collective memory has had the effect of further establishing Estonia as part of the international democratic ethos, based on the rule of law with equal respect and worth for all individuals, a broad and normative goal of transitional justice that serves the contemporary Estonian political circumstance and context. Clearly the Estonian memory institutes, the International Commission for the Investigation of Crimes Against Humanity and the Estonian Institute of Historical Memory have been instrumental in establishing the Estonian collective memory. However the memory institutes' failure to meet all of Mendez obligations',

and the focus on selective memories in establishing an account of the past leaves room for improvement as a mechanism of transitional justice.

BIBLIOGRAPHY

Assmann, Jan and John Czaplicka. 1995. "Collective Memory and Cultural Identity." *New German Critique* (65): 125-133.

Astrov, Alexander. 2009. "The 'Return of History' or Technocratic Administration? The Effects of Depoliticization in Estonian-Russian Relations." In *Identity and Foreign Policy: Baltic-Russian Relations and European Integration*. Eds. E. Berg and P. Ehin. (Surrey: Ashgate Publishing Limited): 85-100.

Bell, Christine. 2009. "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field.'" *The International Journal of Transitional Justice* (3): 5-27.

Bennich-Björkman, Li. 2007. "The Cultural Roots of Estonia's Successful Transition: How Historical Legacies Shaped the 1990s." *East European Politics and Societies* (21): 316-347.

Bresco de Luna, Ignacio and Alberto Rosa. 2013. "Memory, History and Narrative: Shifts of Meaning when (Re)constructing the Past." *European Journal of Psychology* (8): 300-310.

Brüggemann, Karsten and Andres Kasekamp. 2008. "The Politics of History and the 'War of Monuments' in Estonia." *Nationalities Papers* (36): 425-448.

Brüggemann, Karsten and Andres Kasekamp. 2009. "Identity Politics and Contested Histories in Divided Societies: The Case of Estonian War Monuments." In *Identity and Foreign Policy: Baltic-Russian Relations and European Integration*. Eds. E. Berg and P. Ehin. (Surrey: Ashgate Publishing Limited): 51-63.

Cohen, Stanley. 2001. *States of Denial: Knowing About Atrocities and Suffering*. (Cambridge: Polity Press).

Confino, Alon. 1997. "Collective Memory and Cultural History: Problems of Method." *The American Historical Review* (5): 1386-1403.

Coser, Lewis. 1992. *Maurice Halbwachs on Collective Memory*. Ed. L. Coser. (Chicago: University of Chicago Press): 1-34.

David, Roman. 2006. "From Prague to Baghdad: Lustration Systems and their Political Effects." *Government and Opposition* (41): 347-372.

De Brito, Alexandra Barahona. 2001. "Introduction by Editors." In *The Politics of Memory: Transitional Justice in Democratizing Societies*. Ed. C.G. Enriquez, A.B. De Brito, and P. Aguilar. (Oxford: Oxford University Press): 1-14.

Dyzenhaus, David. 2000. "Justifying the Truth and Reconciliation Commission." *The Journal of Political Philosophy* (8): 470-496.

Elster, Jon. 2004. *Closing the Books: Transitional Justice in a Historical Perspective*. (Cambridge: Cambridge University Press).

Estonian Institute of Historical Memory. 2008. "Mission Statement." Accessed April 16 2014. Accessed from: <http://www.mnemosyne.ee/lang/en-us/>.

Estonian International Commission for the Investigation of Crimes Against Humanity. 1999. "Statement by the International Commission for the Investigation of Crimes Against Humanity." Accessed April 16 2014. Accessed from: <http://www.mnemosyne.ee/hc.ee/pdf/statement.pdf>.

Estonian International Commission for the Investigation of Crimes Against Humanity. 2001. "Phase II: The German Occupation of Estonian in 1941-1944." Accessed April 16 2014. Accessed from: http://www.mnemosyne.ee/hc.ee/pdf/conclusions_en_1941-1944.pdf.

Estonian International Commission for the Investigation of Crimes Against Humanity. 2004. "Phase I: The Soviet Occupation in Estonia 1940-1941." Accessed April 16 2014. Accessed from: http://www.mnemosyne.ee/hc.ee/pdf/conclusions_en_1940-1941.pdf.

Estonian International Commission for the Investigation of Crimes Against Humanity. 2008. "Introduction of the Estonian International Commission for the Investigation of Crimes Against Humanity." Accessed April 16 2014. Accessed from: http://www.mnemosyne.ee/hc.ee/index_frameset.htm.

Estonian International Commission for the Investigation of Crimes Against Humanity. 2008. "Phase III: The Soviet Occupation in Estonia from 1944." Accessed April 16 2014. Accessed from: http://www.mnemosyne.ee/hc.ee/pdf/conclusions_en_1944-.pdf.

European Court of Human Rights. 2006. "Fourth Section Decision as to the Admissibility of Application no. 23052/04 by August Kolk Application no. 24018/04 by Petr Kislyiy against Estonia". Accessed May 22 2014. Accessed from: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-72404>.

European Court of Human Rights. 2006. "Fourth Section Decision as to the Admissibility of Applicant no. 14685/04 by Vladimir Penart against Estonia." Accessed May 22 2014. Accessed from: http://www.proyectos.cchs.csic.es/transitionaljustice/sites/default/files/maps/info/case-law/estonia_penart_2004.pdf.

Feldman, Merje. 1999. "Justice in Space? The Restitution of Property Rights in Tallinn, Estonia." *Cultural Geographies* (6): 165-182.

Fofanova, Elena and Viatcheslav Morozov. 2009. "Imperial Legacy and the Russian-Baltic Relations: From Conflicting Historical Narratives to a Foreign Policy Confrontation?" In *Identity and Foreign Policy: Baltic-Russian Relations and European Integration*. Eds. E. Berg and P. Ehin. (Surrey: Ashgate Publishing Limited): 15-31

Forsberg, Tuomas. 2003. "The Philosophy and Practice of Dealing with the Past: Some Conceptual and Normative Issues." In *Burying the Past: Making Peace and Doing Justice after Civil Conflict*, ed. N. Biggar. (Washington: Georgetown University Press): 65-83.

Ignatieff, Michael. 1998. *The Warrior's Honour: Ethnic War and the Modern Conscience*. (London: Holt Paperbacks).

International Centre for Transitional Justice. 2014. "What is Transitional Justice." Accessed from: <http://ictj.org/about/transitional-justice>.

Halbwachs, Maurice. 1950. *La Mémoire Collective*. (Paris: Les Presses universitaires de France).

Haukkala, Hiski. 2009. "Contextualizing and Qualifying Identities: Baltic-Russian Relations in the Context of European Integration." In *Identity and Foreign Policy: Baltic-Russian Relations and European Integration*. Eds. E. Berg and P. Ehin. (Surrey: Ashgate Publishing): 161-170.

Hayner, Priscilla. 2011. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. (New York: Routledge).

Hiio, Toomas and Meelis Maripuu. 2014. Interview with Toomas Hiio and Meelis Maripuu at the *Estonian Institute of Historical Memory*. In Tallinn, Estonia May 19 2014.

Huntington, Samuel. 1993. *The Third Wave: Democratization in the Late Twentieth Century*. (Norman: University of Oklahoma Press).

Jansen, Ea. 2004. "The National Awakening of the Estonian Nation." In *Estonia: Identity and Independence*. Ed. J.J. Subrenat. (Amsterdam: Rodopoi): 83-106.

Kaitsepolitseiamet. 2014. "Kaitsepolitseiamet: Judicial Decisions." Accessed May 19 2014. Accessed from: www.kapo.ee/eng/judicial-decisions.

Kaminski, Marek M. and Monika Nalepa. 2006. "Judging Transitional Justice: A New Criterion for Evaluating Truth Revelation Procedures." *Journal of Conflict Resolution* (50): 383-408.

Kaminski, Marek M. and Monika Nalepa and Barry O'Neill. 2006. "Strategic and Normative Aspects of Transitional Justice." *Journal of Conflict Resolution* (50): 295-303

Kareda, Endel. 1947. *Technique of Economic Sovietisation: A Baltic Experience*. (London: Boreas).

Konrad, Georgy. 1991. "Europe Centrale." in *Autrement Serie Monde*. Ed. C. Wajsbrot and S. Reichmann. (Paris: Autrement).

Kopecek, Michal. 2008. *Past in the Making. Historical Revisionism in Central Europe after 1989*. (Budapest and New York: CEU Press).

Kott, Matthew. 2007. "Estonia 1940-1945: Reports of the Estonian International Commission for the Investigation of Crimes Against Humanity (review)." *Holocaust and Genocide Studies* (21): 321-323.

Laar, Mart. 2004. "The Restoration of Independence in Estonia." In *Estonia: Identity and Independence*. Ed. J.J. Subrenat. (Amsterdam: Rodopoi): 225-238.

Latvijas Republikas Satversmes Aizardzibas Birojs. 2011. "Annual Report 2011." Accessed May 26 2014. Accessed from: <http://www.sab.gov.lv/index.php?lang=en>.

Lebow, Richard Ned. 2006. "The Memory of Politics in Postwar Europe." In *The Politics of Memory in Postwar Europe*. Eds. N. Lebow, W. Kansteiner, and C. Fogu. (Durham and London: Duke University Press): 1-39.

Mark, James. 2010. *The Unfinished Revolution: Making Sense of the Communist Past in Central-Eastern Europe*. (London and New Haven: Yale University Press).

Mendez, Juan E. 1997a. "Accountability for Past Abuses." *Human Rights Quarterly* (19): 255-282.

Mendez, Juan E. 1997b. "In Defense of Transitional Justice." In *Transitional Justice and the Rule of Law in New Democracies*, ed. A. J. McAdams. (Notre Dame: University of Notre Dame Press).

Mendez, Juan E. 2001. "National Reconciliation, Transnational Justice, and the International Criminal Court." *Ethics and International Affairs* (15): 25-44.

Meri, H.E. Lennart. 1999. "A Word of Welcome." Speech given to the *Estonian Institute for Investigating Crimes Against Humanity*. in Kadriorg, Estonia January 26 1999. Accessed from: http://www.mnemosyne.ee/hc.ee/pdf/word_of_welcome_en.pdf.

Miljan, Toivo. 2004. *Historical Dictionary of Estonia*. (Oxford: Scarecrow Press Inc).

Misiunas, Romauld J. and Rein Taagepera. 1983. *The Baltic States, Years of Dependence: 1940-1980*. (Oakland: University of California Press).

Nollendorfs, Valters and Erwin Oberlanders. 2005. "The Hidden and Forbidden History of Latvia Under Soviet and Nazi Occupations." (Riga: Institute of the History of Latvia).

Nora, Pierre. 1989. "Between Memory and History." *Representations* (26): 7-24.

- Nora, Pierre. 2001. *Les Lieux de Mémoire, Volume I: The State*. Ed. D.P. Jordan. (Chicago: University of Chicago Press).
- Offe, Claus. 1997. *Varieties of Transition: The East European and East German Experience*. (Cambridge: MIT Press).
- Onken, Eva-Clarita. 2007. "The Politics of Finding Historical Truth: Reviewing Baltic History Commissions and their Work." *Journal of Baltic Studies* (38): 109-116.
- Onken, Eva-Clarita. 2009. "Commemorating 9 May: The Baltic States and European Memory Politics." In *Identity and Foreign Policy: Baltic-Russian Relations and European Integration*. Eds. E. Berg and P. Ehin, (Surrey: Ashgate Publishing Limited): 33-50
- Orentlicher, Diane. 2007. "'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency." *The International Journal of Transitional Justice* (1): 10-22.
- Parming, Tõnu. 1977. *From the Republic of Estonia to the Estonian Soviet Socialist Republic: The Transfer of Rule and Sovereignty, 1939-1940*. (Helsinki: Otava).
- Parming, Tõnu and Elmar Järvesoo. 1978. "Introduction." In *A Case Study of a Soviet Republic: The Estonian SSR*. Eds. T. Parming and E. Järvesoo. (Boulder: Westview Press): 1-20.
- Pettai, Vello A. 1993. "Estonia: Old Maps and New Roads." *Journal for Democracy* (4): 117-125.
- Pettai, Vello. 2007. "The Construction of State Identity and its Legacies: Legal Restorationism in Estonia." *Ab Imperio* (3): 403-426.
- Raun, Toivo. 2001. *Estonia and the Estonians*. (Stanford: Hoover Institutions Press).
- Raun, Toivo. 2009. "Estonia After 1991: Identity and Integration." *East European Politics and Societies* (23): 526-534.
- Riigikogu. 1992. "Act on Procedure for Taking an Oath." Passed July 9 1992. In Force September 6 1992. Published RT I 1994, 68, 1170.
- Ruutsoo, Rein. 1995. "The Perception of Historical Identity and the Restoration of Estonian National Independence." *Nationalities Paper* (23): 167-179.
- Simon Wiesenthal Center. 2006. "Wiesenthal Center: Estonian Investigation of Suspected Nazi War Criminal – A Pathetic Political Whitewash." Accessed May 23 2014. Accessed from: <http://www.wiesenthal.com/site/apps/s/content.aspx=lsKWlbpJLnF&b=4442915&ct=5849327#U4sh8l5DubE>.
- Stan, Lavinia. 2009. "Introduction: Post-Communist Transition, Justice, and Transitional Justice." In *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*. (London: Routledge).

Stan, Lavinia and Nadya Nedelsky. 2013. "Estonia." In *Encyclopedia of Transitional Justice Volume 2*. Ed. L. Stan and N. Nedelsky. (New York: Cambridge University Press): 161-167.

Stan, Lavinia and Nadya Nedelsky. 2013. "Estonian International Commission for the Investigation of Crimes Against Humanity." In *Encyclopedia of Transitional Justice Volume 3*. Ed. L. Stan and N. Nedelsky. (New York: Cambridge University Press): 117-121.

Taagepera, Rein. 1980. "Soviet Collectivization of Estonian Agriculture: The Deportation Phase." *Soviet Studies* (32): 379-397.

Taagepera, Rein. 1990. "A Note on the March 1989 Elections in Estonia." *Soviet Studies* (42): 329-339.

Tamm, Marek. 2013. "In Search of Lost Time: Memory Politics in Estonia 1991-2011." *Nationalities Papers* (41): 651-674.

Tetiel, Ruti G. 2000. *Transitional Justice*. (Oxford: Oxford University Press).

Teitel, Ruti G. 2003. "Transitional Justice Genealogy." *Harvard Human Rights Journal* (16): 69-94.

The Nation's Memory Institute. 2014. "About Nation's Memory Institute." Accessed 26 May 2014. Accessed from: <http://www.upn.gov.sk/english/about-nations-memory-institute>.

Tonkin, Elizabeth. 1991. *Narrating our Pasts: The Social Construction of Oral History*. (Cambridge: Cambridge University Press).

Williams, Kieran, Brigid Fowler, and Aleks Szczerbiak. 2005. "Explaining Lustration in Central Europe: A 'Post-communist Politics' Approach." *Democratization* (12): 22-43.

Wouters, Nico. 2014. *Transitional Justice and Memory in Europe (1945-2013)*. (Antwerp: Intersentia).

Zalaquett, Jose. 1995. "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints." In *Transitional Justice. Volume I: General Considerations*, ed. N. J. Kritz. (Washington: US Institute of Peace): 3-31.

Weiss-Wendt, Anton. 2008. "Why the Holocaust Does Not Matter to Estonians." *Journal of Baltic Studies* (39): 475-497.