

“Untold suffering and injustice” in the best of all possible worlds¹

Emilian Cioc

In addressing the question of how justice is construed in post-societies, I will focus first and foremost on the thought-provoking nexus of transition and global crisis. The hypothesis made here is that, in a specific way, the latter marks the end of the former. Moreover, this dissolutive interruption would call for a sustained reconsideration of transition. Therefore, the question is: how does the current global systemic crisis affect not only developing or post-societies but “transition” itself as an operative notional construct? How does the global crisis affect justice in post-societies? Would it not be reasonable to consider the question of justice in post-transitional terms?

In the elaboration of these lines of questioning, some elements could be produced out of a comparative enquiry, specifically on post-communism and post-apartheid. Such a comparative endeavour is certain to need prudent limitations and patient protocols. What is at stake here is not to isolate identical, or at least similar, sequences of experience and practice that could eventually be recycled in an improbable transferable model. The aim is to follow the ways in which justice — and therefore politics — is relevantly constructed in contemporary societies. South Africa provides such an example: “The end of apartheid might have fired utopian imaginations around the world with a uniquely telegenic vision of rights restored and history redeemed. But South Africa has also been remarkable for the speed with which it has run up against problems common to societies — especially to post-revolutionary societies — abruptly confronted with the prospect of liberation under neoliberal conditions”.²

The methodological assumption behind my argument is that in order to seize adequately the significance of justice in post-societies it is necessary to say a few words about transition, and this in a political economy perspective rather than in transitional argot. As understood here, for reasons to be mentioned henceforth, transition proves to be an active interpretation of what Adam Przeworski sharply refers to as “the greatest ideologically inspired experiment since Josef Stalin initiated the forced industrialisation of the Soviet Union in 1929”.³ Obviously, this understanding is by no means that of the ordinary “transitology”.

¹ This work was supported by the Romanian National Authority for Scientific Research, project number PN II – CAPACITATI 109/2008: *Rhetorics of justice and deliberative perceptions of the rule of law in post-Communist Romania and post-apartheid South Africa*.

² Jean Comaroff, “Alien-nation: Zombies, immigrants, and millennial capitalism”, *The South Atlantic Quarterly* 101, 4 (2002): 779-805, [784-785].

³ Adam Przeworski, “The neoliberal fallacy”, *Journal of Democracy* 3, 3 (1992): 45-59, [45].

Even though transition is said to be essentially twofold,⁴ equally oriented to both democracy and market economy, one should not miss the considerable asymmetry between the two terms. It is this asymmetry⁵ that allows us to understand the reason why transition to democracy is so intriguingly depoliticised. As it is sometimes pointed out, “processes of democratisation, wherever they have occurred, have tended to coincide with the growing insignificance of government, itself a corollary of the growing crisis of the nation-state”.⁶ The statement allows for reinterpretation and radicalisation: processes of democratization as they took place in transition societies tend to coincide with the growing insignificance of politics (not only of government) going well beyond the nation-state paradigm. Exposing what he calls the neoliberal fallacy, Adam Przeworski offers a complete and stimulating depiction of this destitution of politics:

“The policy style inherent in neoliberal economic reform programs contributes to this process in the following way. Since the neoliberal ‘cure’ is a painful one, with significant social costs, reforms tend to be initiated from above and launched by surprise, independently of public opinion and without the participation of organised political forces. Reforms tend to be enacted by fiat, or railroaded through legislatures without any changes reflecting the divergence of interests and opinions. The political style of implementation tends toward rule by decree; governments seek to mobilise their supporters rather than accept the compromises that might result from public consultation. In the end, the society is taught that it can vote but not choose; legislatures are given the impression that they have no role to play in the elaboration of policy; nascent political parties, trade unions, and other organisations learn that their voices do not count”.⁷

This highly problematic devaluation of substantial democratic politics is crucial in order to elaborate an honest understanding of what happened throughout transitions to market democracy. The same indifference to interests and opinions is affecting justice in post-societies. Not only macroeconomic policies are railroaded and implemented, but also notions and meanings serving to teach people that in some way they have no role to play in the elaboration of meanings. Transitional justice, at least in its ordinary

⁴ Jozef M. van Brabant, *The political economy of transition. Coming to grips with history and methodology* (New York-London: Routledge, 2002): 2.

⁵ Joseph E. Stiglitz, *Making globalization work* (New York-London: W.W. Norton, 2006): 21.

⁶ John L. and Jean Comaroff, “Postcolonial politics and discourses of democracy in Southern Africa: An anthropological reflection on African political modernities”, *Journal of Anthropological Research* 53, 2 (1997): 123-146, [126].

⁷ Przeworski, *Journal of Democracy* 56. Also see Stiglitz, *Make globalization work*, 27.

repetitive form, is such a device railroaded and implemented in order to resolve the question of injustice in these new societies. Despite irreducible differences, Romania and South Africa seem to meet in this rhetoric and yet factual projection of transition. As Patrick Bond explicitly puts it, "South Africa's immediate post-apartheid domestic policy was excessively influenced by conventional neoliberal wisdom, in many cases imported through 'international experience' (a pseudonym for advice by the World Bank and its allies)."⁸

This import-and-implement scheme echoes a certain teleological fallacy structurally embedded in transitional representation. It presents the post-unjust past liberal democracy with its claim to bring together rights and freedom, elections and welfare, as the total realisation of a natural and, for that matter, supernatural necessity fulfilling human history. But this enthusiasm is soon to be proven problematic. It goes without saying: such a fallacy bears ideological and political interests. The genealogy of justice in transitional societies should be capable of undoing this teleological sophism. "Finally, it is one of the great ironies of our age that the liberal theocracy counselling transition managers into proceeding rapidly and holistically for the sake of democracy and free markets, as well as some managers embracing such precepts themselves, have presented their arguments in a thoroughly autocratic, often arrogant fashion, suggesting demagogically the need for a 'bold preemptive strike' for 'there is no alternative'".⁹

Yet another aspect is worth reminiscing especially about post-socialism. For very specific reasons, socialism is also a transition: to communism. In the case of socialist societies, communism should have been the genuine post-socialism. The irony is that, after what is conventionally called the fall of communism, post-socialism turned out to be capitalism in its neo-liberal form. In this respect, post-communism stands as a post-transition or, more exactly, as a transition reloaded. In a similar way, for the liberation movement who took the Freedom Charter for a politically founding document, post-apartheid should have been a socialist democracy forged in national terms. The irony, in this case, is that post-apartheid South Africa is a liberal democracy, a society in transition to liberal democracy, thus sharing a "post-socialist" condition.¹⁰

Reminding this convoluted and somehow surprising history of transitions also allows us to seize an even more fundamental aspect.

⁸ Patrick Bond, *Elite transition: From apartheid to neoliberalism in South Africa* (London: Pluto Press, 2000): 216.

⁹ Van Brabant, *The political economy of transition*, 466. See also Joseph E. Stiglitz, "Is there a post-Washington consensus consensus?" in Narcis Serra and Joseph E. Stiglitz, eds., *The Washington consensus reconsidered. Towards a new global governance* (Oxford: Oxford University Press, 2008): 51.

¹⁰ Nancy Fraser, *Justice interruptus: Critical reflections on the "postsocialist" condition* (New York-London: Routledge, 1997): 3.

“In formerly socialist countries, moreover, the rhetoric of “transition” – once used by the party to justify the shortcomings of socialism and presented as a mere transition phase *to* communism – was quite cynically transferred to the opposite camp. Now the poor and oppressed, literally dying of homelessness, disease, and hunger in Moscow and elsewhere, are told by cynical leaders that the suffering needs to happen during the transition to fully fledged capitalism, and that neo-liberal shock policies are aimed at making the transition short”.¹¹

The rhetoric of transition is always about justifying deficiency and limitations. It is constitutively linked to specific ways of dealing with suffering. The ways in which transition narratives tell or rather don't tell specific forms of suffering and injustices are meant to ensure that they are not intended; provoked as they are by impersonal and indifferent necessities. This kind of necessity engineering is the very rationale of the rhetoric of transition. Transition is also a singular chrono-logy, a “rationalisation of the time sequence”,¹² a highly elaborated procedure whose main task is, simply put, to organise delay and disillusionment and, even more precisely, to present impossibility as delay. Perhaps this is the most remarkable “narcotic effect” of transition as “a public relations” campaign adroitly stage-managed for a gullible public”.¹³ Suffering management is not the only and not even the main reason why time is so important in transition societies. As Przeworski explains it, “they are urged to short-circuit the democratic process by introducing reforms so swiftly that citizens will have no time to mobilise effectively against them.”¹⁴

“Transition” — as in “post-communism” or “post-apartheid” — is therefore to be described as a device to perform the function of a quarantine procedure: insular dysfunctions. Transition rhetoric procedures are meant to justify a time issue: why democracy doesn't materialise in a functional, substantive and undeniable way.

Would it then not be appropriate to reconsider the transitional representation of justice in post-societies? Post-societies generally claim that justice is vital, needing to be done, restored, guaranteed. And yet, the significance of this claim both imperative and declarative is not always clearly elucidated. Injustice experiences, the part of intolerable, the affirmation often difficult of a socially relevant demand for justice, due to this ambiguity both inevitable and engineered, serve all sorts of interests—political, judicial,

¹¹ Ugo Mattei and Laura Nader, *Plunder: When the rule of law is illegal*, (Oxford: Blackwell, 2008): 47.

¹² Van Brabant, *The political economy of transition*, xv.

¹³ *Ibid.* 473.

¹⁴ Przeworski, *Journal of Democracy*, 45-46.

economic. It is the very reason why it is decisive to reveal what the public discourse tells or refuses to tell in accordance to strategies and tactics implying interests when speaking of justice.

Despite the aforementioned teleological projection, the significance of justice and injustice imply an open deliberation including conflicts and opinions, conflicting rationalities, rational but not necessarily reasonable interests, powers, arguments and sensibilities. It obviously does not mean that the operational or deliberative meanings thus produced would be artificial, unauthentic, mere corrupted images of a non conventional, transcendent, natural-supernatural meaning which would have been forgotten, repressed, denied, but accessible for revelation. All discoveries are construction, that is innovation and invention, indistinctively. Moreover, determination is simultaneously negation. Therefore, to determine the significance of justice in a particular way is to deny or devalue other possible meanings and so to suppress the possibility of different social and political practices. Determination and its negation are never neutral, objective, in strict adequacy to rationality supposedly impartial and ideal. To use P. Bond's terms, "evolving rhetorics are themselves important markers of material processes".¹⁵

What would then be the major characteristics of the ways in which transition societies such as Romania and South Africa construe meanings of justice? "During transition periods, determinations of what is fair and just are products of what is perceived as previously endured injustices":¹⁶ this could be a useful formulation of the basic assumption in the transitional justice paradigm. Two remarks are decisive in this context. "Perception" is by no means spontaneous, natural or immediate. It is rhetorically engineered. Second, what is perceived does not exist independently of its perception. In other words, not only is perception technically assembled but it also produces its object, here the past. These questions are simply crucial because they are relevant not only for transitional contexts. As Amartya Sen explains, "The identification of redressable injustice is not only what animates us to think about justice and injustice, it is also central ... to the theory of justice".¹⁷ What was said about perception also applies to what Sen designates as "identification". This decisive moment, I suggest, should be formulated in a more resolutely constructivist way.

Let us now turn to post-socialist constructivist rhetoric of justice and notice an unprecedented discredit of the idea of justice. There are several elements explaining this decline. First of all, given its fundamental character,

¹⁵ Bond, *Elite transition*, 211.

¹⁶ Csongor Kuti, *Post-communist restitution and the rule of law* (Budapest: Central European University Press, 2009): 82.

¹⁷ Amartya Sen, *The idea of justice* (Cambridge MA: The Belknap Press of Harvard University Press, 2009): vii.

the promise or, to put it mildly, the agenda of post-communism bears the name and the sign of liberty. Second, it should be remembered that one of the fundamental claims made by communism is to eradicate the capitalist injustice. The conflict organised by the socialist state against capitalist injustices was massively counterfeit and it was consumed long before the fall of its regime. We therefore understand that for an anti-communist sensibility, justice is somehow stained, compromised. Third, justice doesn't go with equality. The fall of a pretended egalitarian regime seems to render justice suspicious, to severely damage it. Exploitation has no significance other than an ideological one. Nancy Fraser's depiction of the post-socialist condition perfectly acknowledges this discarded justice:

"In these 'postsocialist' conflicts, group identity supplants class interest as the chief medium of political mobilisation. Cultural domination supplants exploitation as the fundamental injustice. And cultural recognition displaces socioeconomic redistribution as the remedy for injustice and the goal of political struggle".¹⁸

The speed of this transformation would certainly be worth patient inquiry if one would take van Brabant's expression widely: transition is to be understood "in terms of sequencing, timing, sectoralism, intensity, and speed".¹⁹ In the same time, another fundamental significance of injustice in terms of spoliation is denied and banned. This shift in conceiving and practicing justice is related to the profile of the new economic model. The new organisation of societies knows how to use this "post-socialist" indeterminacy of justice and determines it in such a way that the demand for justice does not affect its dominance.

Mahmood Mamdani also speaks about "the collapse of a paradigm, that of justice",²⁰ which would also be the origin of the idea of reconciliation. Along the same lines, Comaroff and Comaroff say:

"Gone is any official-speak of an egalitarian socialist future, of work-for-all, of the welfare state envisioned in the Freedom Charter that, famously, mandated the struggle against the *ancien régime*. Gone, too, are the critiques of the free market and of bourgeois ideology once voiced by the anti-apartheid movements, their idealism reframed by the perceived reality of global economic forces. Elsewhere, we have suggested that these conditions, and similar

¹⁸ Fraser, *Justice interruptus*, 11.

¹⁹ Van Brabant, *The political economy of transition*, 5.

²⁰ Mahmood Mamdani, "From justice to reconciliation: Making sense of the African experience" in Colin Leys and Mahmood Mamdani, *Crisis and reconstruction: African perspectives: two lectures* (Nordiska Afrikainsitutet: Uppsala, 1998): 17.

ones in other places, have conduced to a form of 'millennial capitalism' ".²¹

The major stake is to disconnected injustice from economics. Neo-liberal market-founded economics, that is. As rhetorically construed by the dominant transitional discourse, justice only serves to rehabilitate capitalism (South Africa)²² or to guarantee its purity (post-communist societies).

Suppressing the political-economic dimension of injustice is threatening the very viability of a community restored in its possibility by a truth-telling based reconciliation process as quite early highlighted by certain observers. The consequence of all this is clearly stated by Zinaida Miller:

"Despite its claims to exposure, revelation and memorialisation, the project of transitional justice may simultaneously perpetuate invisibility and silence. The literature, institutions and international enterprise of transitional justice historically have failed to recognize the full importance of structural violence, inequality and economic (re)distribution to conflict, its resolution, transition itself and processes of truth or justice seeking and reconciliation".²³

This failure is what needs to be acknowledged. Thus, in post-societies, inequity as injustice disappears but without a purely endogenous explanation. As authors like Stiglitz or Krugman observe, this inconsideration of inequity is one of the defining lines of the Washington Consensus.²⁴ It is not at all out of regrettable negligence or a cultural consequence but because the stake is to give inequality some legitimacy.

Transition is in this sense an ad-hoc procedure meant to organise and control imperfections and impurities. Post-societies only recognise past injustice. Present times are simply incapable of injustice so that market democracy could be absolved of any trace of negativity other than accidental. The past is the political realm of injustice and human rights violations. The consequences of this perspective? Coming to terms with past injustice means in fact cleansing the present, in the form of a "process by which past grievances are sanctified into a shield protecting a new power against future critiques".²⁵ Strangely enough, apologising for the past ends up by making and apology of the present. By isolating injustice in the past, by determining the meaning of justice in criminal and transitional terms, this perspective fails

²¹ Jean Comaroff, *The South Atlantic Quarterly*, 785.

²² Michael MacDonald, "The political economy of identity politics", *The South Atlantic Quarterly* 103, 4 (2004): 629-656, [643].

²³ Zinaida Miller, "Effects of invisibility: In search of the 'economic' in transitional justice", *The International Journal of Transitional Justice* 2 (2008): 266-291, [267].

²⁴ Stiglitz, *The Washington consensus reconsidered*, 17.

²⁵ Mamdani, *Crisis and reconstruction*, 20.

to account for contemporary forms of injustice and for an inoperative rule of law. Thus the discourse on the injustices provoked by transition, by the market economy, the multiplication of massive and finally unjustifiable inequity, is totally deprived of its meaning and any deliberative force for that matter. That “inequality itself is not to be prosecuted or amnestied”²⁶ is not only the unintended consequence of the partial formulation of justice in transitional terms: it is its very presupposition. This genesis of the best of all possible worlds incorporates a sweeping violence just as its theodicy-like narrative proves to be perplexingly obscene as Derrida puts it:

“The expression ‘democracy to come’ does indeed translate or call for a militant and interminable political critique. A weapon aimed at the enemies of democracy, it protests against all naïveté and every political abuse, every rhetoric that would present as a present or existing democracy, as a *de facto* democracy, what remains inadequate to the democratic demand, whether nearby or far away, at home or somewhere else in the world, anywhere that a discourse on human rights and on democracy remains little more than an obscene alibi so long as it tolerates the terrible plight of so many millions of human beings suffering from malnutrition, disease, and humiliation, grossly deprived not only of bread and water but of equality or freedom, dispossessed of the rights of all, of everyone, of anyone”.²⁷

In crisis we trust!, the critics of capitalism — including certain anti-apartheid movements, for example — seem willing to pronounce. Indeed, there is an awaited crisis²⁸ in the hope that its fatal dysfunctions and disequilibria would irreversibly undermine certain directions of the globalising capitalism and thus promising revolutionary odds, opportunities for “the next struggle”,²⁹ for a radicalisation of the political revolution in social terms. But the “real” crisis having come to manifestation starting with 2007 proved to be quite the contrary. The global crisis is far from delivering on these revolutionary hopes especially because, for political purposes, the financial and then economic multiple disorder is rhetorically designed so as to ensure the safeguard and technical backup of the *status quo*. Rescue plans, bail-outs and austerity cutback policies can only endorse this affirmation.

²⁶ Miller, *The International Journal of Transitional Justice*, 268.

²⁷ Jacques Derrida, *Rogues: Two essays on reason*, Pascale-Anne Brault and Michael Naas, trans. (Stanford: Stanford University Press, 2005): 86.

²⁸ Hein Marais, *South Africa: Limits to change: The political economy of transition* (New York: Zed Books, 2001): 37.

²⁹ John S. Saul, “The next liberation struggle?”, *Review of African Political Economy* 30, 96 (2003): 187-202.

The crisis discourse and the transitional rhetoric surreptitiously congregate. One can easily recognize the same style of implementation, the same claim of “there is no alternative” rendering politics insignificant, the same urges to renounce deliberation and, for that matter, any creative institutional arrangements questioning the fundamental options. In short, global crisis is politics by fiat at a global scale. Nevertheless, “crisis” is the terminal-radicalised feature of “transition”. Just like transition, crisis has to provide a containing justification for failures, inequities, suffering, and injustices. Crisis is exhausting the possibility to signify injustice by means of an exclusive reference to the past reopening the possibility for a renewed demand for justice.

And so, unjust inequity is managed somehow differently. While transition strives to explain that impoverishment and suffering is a temporary and necessary phase promising a time for a better life for all, crisis admits that such a time cannot exist, justifying this impossibility by invocation of authoritative, non-political, technical and systemic constraints. The discourse of crisis thus completely and serenely abandons any promise of a better future, of future growth and welfare, and, ultimately, of future. Future is obsolete. As previously stated, one major objective of the transition-based representation was to deny any structural character of failures, errors, delays and shortcomings having occurred in the transformation toward a market designed world. In other words, it was meant to localise at the peripheries, to contain, to insulate an endless crisis-like series of events. The crisis discourse is, in a sense, the globalisation of a suspended transition.

At a conceptual but also ideological level, there are at least two critical events: the self-regulatory capacity of the market and the claim that a highly deregulated economy necessarily leads to sustainable growth and development. Both are extensively damaged and discredited. For these specific reasons crisis is an ad hoc procedure aiming to provide justification for conservative revolutionary policies. In doing so, the rhetoric of crisis is compelled to make use of a specific normativistic fallacy fictionalising implacable necessity: being what they are, things have to be the way they presently are and it would be both impossible and illegitimate for them to be different. Present times are simultaneously the completion and the confirmation of a normative nature. The binding nature of things it serves to account for, the discourse of crisis constructs piece by piece recycling contingent facts in order to assemble an objectivity that would present the harsh measures as mere translation of a rational and mandatory order, righteously determining the reconfiguration of political, social, economic and judicial practices. Briefly put, the trope of crisis is a complex device supposed to display the impossibility of a radical doubt cast on the reference system. It thus serves to safeguard the regime with the price of postponing democracy and of naturalising poverty and deprivation.

The crisis interrupts transition also in the sense that the democratic capitalism promised at the end of the road doesn't exist anymore. It would therefore be of great interest to think of the fall of socialism and the fall of the markets together. With due prudence, one could say that global crisis marks the fall of post-socialism. This offers an opportunity for scrutinising justice in post-transitional societies, mainly focusing on the possibility to rescale the demand for justice, justice capable of social reconciliation this time. An opportunity also to think justice not just as mere calculation of retrocession, redistributions and recognitions, lustrations or criminal convictions... To some extent, indeed, crisis seems to reveal what is denied, deactivated, excluded by the post-communist or post-apartheid determination of injustice. And the ways in which this comes back to haunt the best of all the possible worlds.

University of Cluj-Napoca