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Transitional justice in postwar Austria

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Abstract

Austria's post-World War II transition from two consecutive, abusive regimes (the Austro-fascist and the Nazi regime) to a functioning democracy has not yet been thoroughly assessed through the lens of transitional justice. An evaluation of what could now be dubbed transitional-justice measures shows that Austria was reluctant in accepting its collective responsibility vis-à-vis the victims of World War II. Another defining factor of Austria's transition is that it never encouraged the surviving victims of the Nazi regime to return. An appraisal of Austria's transition in light of the two final ends of transitional justice, namely democracy and reconciliation, culminates in two conclusions: first, Austria attained the goal of democracy but failed with reconciliation; second, the current model of transitional justice is ill-equipped to assess the non-linear course of long-past transitions.

Keywords: legal history; transitional justice; Austro-fascism; national socialism; reconciliation

1 Introduction

Scholars of Austrian legal history have studied the Austro-fascist regime, Austria's time as part of Nazi Germany and its post-World War II era extensively. However, their findings have not been thoroughly conceptualised in collaboration with other disciplines. One fairly new discipline with the potential to extract novel insights and lessons from Austria's postwar period is transitional justice, which refers to the 'self-conscious construction of a distinctive conception of justice associated with periods of radical political change following past oppressive rule' (Teitel, 2014, p. 3).

This paper aims to bring Austria's experience as a transitional country to the attention of an international, non-legal and legal audience. It examines the model of transitional justice currently employed in the UN system by assessing it against the evidence extracted from the case of postwar Austria. Austria has attained a stable democracy and is thus arguably not in transition anymore (Green, 2012, p. 129), but whether it has achieved reconciliation, the second goal of transitional justice (de Greiff, 2012, p. 48; UNHRC, 2012, para. 21), has not yet been studied. The Austrian case-study constitutes an interesting opportunity to test the current model of transitional justice in an evaluation of long-past transitions.

The first section of this paper summarises the pertinent parts of Austria's history leading to the transition. Section 2 examines the classification of postwar Austria within the contemporary model of transitional justice. The third section considers Austria's actual implementation of each of the four components of a holistic approach to transitional justice: truth, justice, reparations and guarantees of non-recurrence (de Greiff, 2012, pp. 31–77; United Nations, 2011, para. 19). The last section evaluates whether postwar Austria successfully achieved transitional justice and discusses the merits and limitations of the transitional-justice model in an assessment of generations of historical developments after large-scale human rights abuses.

2 The events leading to Austria's transition

A discussion of Austria's post-World War II era as a case-study for transitional justice warrants a look at the events that shaped Austria's identity. For a complete picture, not just the Nazi regime and World

War II, but also the preceding Austro-fascist regime must be taken into account: the Republic of Austria is not the successor of just one, but of two consecutive, repressive regimes committing mass atrocities, as the Nazi regime itself had ousted the preceding rule of the Austro-fascists. Hence, the new Austrian Republic superseded ‘two dictatorial pasts’ (Botz, 2006, pp. 191–213). While one can only understand Austria’s history and identity if the Austro-fascist regime is duly taken into account, the Nazi regime that followed often overshadows the Austro-fascist mass atrocities. In light of this, the following section covers the period of 1918 until 1945, which includes the dawn of the First Republic of Austria, the hardship of its first few years of existence, the civil unrest and fighting between the Social Democrats and Christian Socials leading to the breakdown of the democratic system, the ensuing authoritarian Austro-fascist regime, the *Anschluss* of Austria by Hitler and World War II.

1918 was not only the end of World War I – it was also the end of the Austro-Hungarian empire and the beginning of something that felt like a catastrophe to many Austrians. Austria’s defeat by the Entente led to the sudden transformation of the huge constitutional monarchy into a tiny democratic republic. After the dissolution of the former empire, the French prime minister, George Clemenceau, allegedly coined the famous remark: ‘And the rest is Austria.’¹ Whether or not Clemenceau actually said this, it epitomises the small republic’s lack of self-esteem; the Austrian state from 1918 until 1938 still carries a telling, albeit melodramatic, nickname: ‘the state that no-one wanted’ (Andics, 1962).

Infant Austria’s lack of self-confidence was also palpable in the 1918 proclamation of the provisional National Assembly of ‘German-Austria’, which was declared an integral part of Germany (Vocelka, 2002, p. 272; Hoke, 1996, p. 466). This first effort to relinquish Austria’s independence was short-lived: the Entente insisted on including Article 88 in the 1919 Treaty of Saint-Germain-en-Laye, which stated that ‘[t]he independence of Austria is inalienable otherwise than with the consent of the Council of the League of Nations’. Correspondingly, the 1919 Treaty of Versailles read in Article 80 that ‘Germany acknowledges and will respect strictly the independence of Austria’. Thus, a ‘unification’ of Austria and Germany was prohibited and the republic had to settle for its inalienable status as an independent, separate state and its new name ‘Austria’ (as opposed to ‘German-Austria’) (Hoke, 1996, p. 466; Forum Politische Bildung, 1998, p. 43).

The first democratic elections in 1919 brought about a coalition between the Social Democrats and the conservative Christian Social Party. This coalition fostered the necessary political consensus to solve the most pressing issues of the young state, but collapsed in 1920. The differences between the two powerful parties only grew more severe in the face of Austria’s economic difficulties, which culminated in extreme inflation and unemployment (Hoke, 1996, pp. 470–472).

Consequently, the economic distress and soaring poverty led to polarisation and radicalisation among the population and to increasing influence of two paramilitary groups – one affiliated with the Conservatives (called *Heimwehr*, established immediately after World War I) and one affiliated with the Social Democrats (called *Republikanischer Schutzbund*, established in 1923) (Hoke, 1996, p. 472).

As the Great Depression took a hold of Austria, the Austrian National Socialist Party (NSDAP) grew stronger and Mussolini’s fascist Italy gained influence over Austria. On 4 March 1933, a quarrel on a procedural question prompted the three presidents of the Austrian parliament to resign in order to be able to cast a vote themselves (Hoke, 1996, p. 473). Their resignations incapacitated the parliament, as only the president or the vice-presidents could call a session. When the parliamentarians attempted to resume the session and resolve the matter by electing new presidents the next day, the police, following Chancellor Engelbert Dollfuss’s orders, barred them from entering the parliament. This so-called *Selbstausschaltung*² of the Austrian parliament was the momentous first step towards dictatorship in Austria (Hoke, 1996, p. 473).

¹The original French quote has been claimed to be ‘L’Autriche, c’est ce qui reste’ (Fiala, 2013, p. 20).

²Which translates roughly into ‘self-destruction’ or ‘self-sabotage’.

Subsequently, Chancellor Dollfuss from the Christian Social Party and with the support of the Roman Catholic Church established a dictatorship by unconstitutionally invoking a wartime emergency power as a purported legal basis (Hoke, 1996, p. 473). In February 1934, a short armed conflict between the paramilitary group of the Social Democrats and the new regime (now merged into the umbrella organisation ‘the Fatherland Front’) broke out. This clash finally led to the prohibition of the Social Democratic Party, rendering the Fatherland Front the only permitted party in Austria,³ and to executions and detainments of members of the prohibited parties (Tálos and Manoschek, 2005, pp. 126ff.; Hoke, 1996, pp. 473, 476). In May 1934, Chancellor Dollfuss unilaterally and unlawfully enacted a new Constitution through his emergency powers. To fabricate pseudo-legitimacy, he subsequently let the rest of the old parliament, without its now illegal Social Democratic members, vote on the Constitution that simultaneously abolished the parliament. The adoption of this new Constitution marked the official end of Austria’s first attempt at democracy and the beginning of the authoritarian Austro-fascist regime (Hoke, 1996, p. 474).

Until 1938, the Austro-fascist regime managed to resist Adolf Hitler’s efforts to annex the country. This was partly due to Benito Mussolini’s promise to protect Austria’s independence with the Italian troops (Hoke, 1996, p. 494). However, when Hitler finally became an ally of Mussolini and when German pressure increased, Kurt Schuschnigg, Austria’s chancellor after Dollfuss’s assassination during a failed coup by the Nazis in July 1934, feared for Austria’s independence. Consequently, on 9 March 1938, he announced that there would be a referendum on 13 March – supported by the illegal Social Democrats and the illegal Communist Party, which were also opposed to an *Anschluss* – to show the international community that the Austrian population did not wish to become part of Germany (Hoke, 1996, p. 495). Ironically, this looming referendum turned into a catalyst for Austria’s *Anschluss* to Germany: on 11 March 1938, two days before the planned referendum, Hitler threatened Schuschnigg with an invasion of Austria should he refuse to cancel the referendum and resign. Schuschnigg succumbed to Hitler’s demand and Arthur Seyß-Inquart from the NSDAP became the new chancellor on the same day (Hoke, 1996, p. 495).

On 12 March, German troops marched into Austria without facing open resistance, even being greeted by cheering Austrians in many places. On 13 March, the Austrian government under Seyß-Inquart passed a law, declaring that Austria was now part of the German Reich.⁴ On 10 April, when Austria was already under the complete control of Germany, Hitler held a referendum to claim that the *Anschluss* had been in line with the Austrians’ will: 99.73 per cent voted in favour of the *Anschluss* (Lemberger, 2002, pp. 102–103; Hoke, 1996, p. 496). While it is undeniable that Hitler had many Austrian supporters who had hoped and fought for ‘reunification’, the outcome of this referendum is not considered the result of a free, democratic process (Hoke, 1996, pp. 496–497). Moreover, Jews and political opponents were excluded from voting in the referendum. However, historians suggest that the majority of the population would still have voted in favour if the *Anschluss* in a free referendum (Bischof *et al.*, 2009; Hoke, 1996, pp. 496–497).

Only twenty years after its proclamation, the First Austrian Republic officially ceased to exist – although it had already relinquished its democratic system five years earlier – and was swallowed by the German Third Reich. Seven years later, in 1945, the four Allied Powers defeated the Third Reich. The Austrian interim government of the three ‘anti-fascist’ parties proclaimed Austria as an independent republic and declared the *Anschluss* null and void. Until 1955, the Allies stayed in Austria, which was split up into four zones, each administered by one of the Allies (Hoke, 1996, p. 506).

Both Austrian dictatorships (i.e. the Austro-fascist and the Nazi regimes) committed systematic and large-scale human rights abuses. The Austro-fascists, comprising the Christian Social Party among other conservative or clerical groups, persecuted other political parties, both those of the political left and, as

³The NSDAP and the Communist Party had already been prohibited by that time.

⁴The law lacked any viable legal basis and was also never signed by the Austrian President Miklas, who resigned the same day. For an analysis of the (il)legality of the *Anschluss* and its consequences for Austria’s international legal personality from the perspective of public international law, see Clute (2002).

long as they could, the NSDAP (Hoke, 1996, pp. 473–477). The Nazis, in turn, purged the Austro-fascists (as well as other parties) when they took over Austria (Hoke, 1996, p. 496). In other words, the Nazis were now oppressing their former oppressors. Yet, when World War II ended, the Social Democrats (SPÖ), the former Christian Socials (now called ÖVP) and, until 1947, the Communist Party put their antagonistic past on ice and worked together to reconstruct war-torn Austria and to gain independence from the Allies. This mutual willingness to compromise fostered stability in postwar Austria and successfully transformed it into a stable, democratic society (Müller, 2009).

The harrowing atrocities committed in and by the Third Reich are well known. In addition to the millions who fled the Third Reich and became refugees, more than 6 million people, most of them Jews, but also people with disabilities, homosexuals, Roma and Sinti, Jehovah's Witnesses and other minorities, were killed by the Nazi regime; hundreds of thousands of them died in concentration camps (Hilberg, 1990; Benz, 1991, p. 2; Hoke, 1996, pp. 493, 500). These persecuted minorities also faced grave discrimination by the authorities and by much of the population in their daily lives. Even those who were not detained, forced into slave labour or killed were denied the legal status and equality as citizens as enjoyed by the rest of the population: they were not allowed to go to school, keep their work or marry 'Aryans'. Property was arbitrarily taken from them by the government, enriching not just the Nazis, but also the rest of the Austrian society as a whole (Moser, 1966; 1991, p. 67; Hoke, 1996, pp. 492–493, 500). Jews were forced to wear signs that would single them out and make them easy targets for abuse.

In sum, the state – and Austrians with it – denied millions of people their human dignity. Social or political resistance was very limited in Austria and large parts of Austrian society supported the Nazis by at least turning a blind eye to the atrocities (for a compelling examination of the issue of moral indifference and bystanders, see Baum (1988)). After World War II, the persecuted Jewish population had disappeared almost entirely from Austria; the vast majority of the Austrian Jews who had survived never returned – and were never asked to return (Wilder-Okladek, 1969, pp. 6–7, 36; Schwarz, 2004, p. 178).⁵

3 Austria's classification as a former transitional society

Transitional justice as a scientific concept only emerged in the late 1980s or early 1990s (Teitel, 2014, p. 4; Werle and Vormbaum, 2016, p. 6). While many aspects of transitional justice remain contentious among scholars and practitioners (Nagy, 2014, p. 216; Bell, 2009, p. 13), most agree with former UN Secretary-General Kofi Annan's description of transitional justice as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation' (United Nations, 2004, para. (iii)(8); Teitel, 2000; Quinn, 2009, p. 3). This definition, which conceptualises transitional justice as a 'toolbox' of both judicial and non-judicial measures and mechanisms, was confirmed in a follow-up report in 2011 by former UN Secretary-General Ban Ki-moon (United Nations, 2011). Yet, it is noteworthy that this broad definition is policy-oriented and not scientific. Nevertheless, this paper follows this definition due to its prevalence within the UN system and among practitioners and scholars (United Nations, 2004; 2011; de Greiff, 2012).

Postwar Austria was in a situation that would nowadays receive the full attention of scholars and practitioners of transitional justice. As the International Center for Transitional Justice put it:

'There can sometimes be unnecessary confusion about whether a country is in a period of "transition" or not, but practically speaking it is not that complicated. The question is whether an opportunity has emerged to address massive violations, even if it is a limited opportunity.' (International Center for Transitional Justice, 2019)

⁵A 1946 poll revealed that 46 per cent of the surveyed Austrians were even opposed to a return of the displaced Austrian Jews (Bailer-Galanda, 2000).

Austria was in transition from two consecutive dictatorial regimes to a democratic future and had the opportunity to address the atrocities that had occurred during the two regimes.

Although infant Austria's classification as a transitional society is quite straightforward, its transition features a few peculiarities that must be detangled before discussing it within the framework of contemporary transitional justice.

While there was some Austrian resistance during World War II, it remained slim and Hitler's reign was clearly not overcome by a bottom-up upheaval by the Austrian people. However, the Allies did not just put an end to the dictatorship; they also made certain measures of 'denazification' a condition for Austria's recovery of full independence and self-government (Hirt, 2012; Deak, 2006). Accordingly, Austria was not the initiator and original architect of its own transition⁶; its transition was initiated by an intervention of foreign countries.

The Austrian population had suffered gravely under the war and most Austrians were glad about its end.⁷ Nevertheless, the majority of Austrians had not been persecuted by the Nazi regime and most of the actual victims were murdered or had fled the country.⁸ This is a crucial feature of transitional Austria, as the population might not have felt transitional justice necessary: the persecuted minorities of World War II were not living among the remaining Austrians as fellow citizens anymore. Accordingly, to engage in a process to 'ensure accountability, serve justice and achieve reconciliation' was not among the priorities of the Austrian population. In contrast, many of the former oppressees and oppressors of the Austro-fascist regime were still living door to door. Nevertheless, the antagonistic parts of the Austrian population co-operated for a common cause: their priority was to reconstruct the war-torn country, restore a functioning democracy in continuity with the First Republic and gain independence from the occupying powers (Botz, 2006, pp. 203–204).

Although the Allies initially insisted on certain measures of transitional justice, Austria was not the focus of the international community: Austria successfully portrayed itself as Hitler's 'first victim', both abroad and in the collective memory of its population (Pelinka, 2002). While Germany's population had no choice but to accept its full moral and legal responsibility, Austria succeeded with hiding in Germany's shadow and playing the Austrian victim-card (Uhl, 2001, p. 20). The Allies demanded 'denazification' from Austria, but only official members of the NSDAP were considered responsible and faced some sanctions. In contrast, all Germans were considered guilty (Stiefel, 1981, p. 295; Lorenz, 2006, pp. 187–188). This pronounced focus on Germany as the perpetrator of World War II can still be felt today; even contemporary literature and UN reports on transitional justice reveal that postwar Germany is thought of as a prime example of a society in transition, while Austria evades this perhaps unpleasant kind of attention (see e.g. Teitel, 2000, pp. 103–105, 122–124; UNHRC, 2017, para. 10).

Nowadays, there is broad consensus in Austrian society and academia that Austria was not an innocent victim of Hitlerite aggression (Hoke, 1996, pp. 496–497, 500; Uhl, 2001, p. 28). While the Republic of Austria as a sovereign nation had perished under Hitler, Austrians as a people had not. Notwithstanding records of civilians who condemned the Third Reich and showed resistance (Neugebauer, 2008), the vast majority of Austrians were complicit, either by looking the other way and not asking any questions about the fate of former neighbours and fellow citizens or by actively contributing to the Nazi regime (Forster, 2012, pp. 59–60). It is important to stress that not just the many Austrians who held leadership positions and implemented the Nazi ideology for a living carry collective responsibility; the millions of Austrians who approved of the regime also benefitted

⁶However, it is not per se unusual that transitional-justice measures are initially demanded or even set up by external actors (e.g. Nagy, 2014, pp. 220ff.).

⁷Yet, by far not all felt that the victory of the Allies meant liberation for Austria, as some considered it a defeat (Botz, 2006, p. 199).

⁸To put it in numbers: more than 65,000 from the approximately 205,000 Austrian Jews who had lived in Austria in 1938 had been killed (thus, more than 35 per cent of the pre-war Jewish population) and more than 125,000 of Austrian Jews had fled. Only a few thousand Jews were left in Austria after 1945 and only very few of those who had fled returned. See Wilder-Okladek (1969, p. 28); Deak (2006, p. 130).

from it and simply adjusted to the everyday life of Nazism (Radzik, 2001; Baum, 1988). Even those who might not have known what was happening in the concentration camps knew that former fellow rights-bearers and co-citizens were disappearing and dehumanised.

This observation is relevant in light of the concept and the significance of ‘collective crimes’, defined as

‘acts committed by a significant number of group members in the name of all group members and against individuals identified as “outsiders”. This type of crime cannot be committed by an individual, a random group or a collective understood as a mere sum of its members. It presupposes the collective intention to perpetrate a particular type of misdeed, collective awareness about the nature of the intended misdeed, organized effort to realize the intention (i.e., to carry out the chosen criminal action) and, finally, collective awareness about its consequences.’ (Dimitrijević, 2008, p. 9)

The German Nazi regime’s atrocities have been classified as collective crimes (Dimitrijević, 2008, p. 9; Radzik, 2001). As Austria was part of the Nazi regime, this classification extends beyond the borders of modern-day Germany: the wrongs were committed in the name of all members of the group, namely the ‘German race’ to which the majority of Austrians supposedly belonged.

This classification of the large-scale human rights abuse in Austria as a collective crime is noteworthy because it has implications for the transition:

‘Mass crimes of yesterday are directly relevant for the way we live today. Injustices done in the name of the group to which we belong have created consequences that cannot be erased by an act of political will, either from our history, or from our present.’ (Dimitrijević, 2008, p. 15)

How postwar Austria dealt with the collective crimes of its past is portrayed in the rest of this section through the lens of transitional justice. Whether it dealt *appropriately* with its past and whether transitional justice can help to answer this question will be discussed in Section 4.

It is noteworthy that the horrendous crimes of the Nazis overshadowed the deep rifts created by the Austro-fascist regime in Austrian society. Hence, very few transitional-justice measures have ever been implemented to deal with the Austro-fascists’ abuses. The few measures that took place will be highlighted in the relevant context. However, the bulk of the following discussion concentrates on the measures taken in response to the crimes committed during the Nazi regime.

While various classifications of the distinct tools aimed at transitional justice exist, the ensuing analysis will use the categories roughly carved out by Ruti Teitel, later refined by Pablo de Greiff and now implemented in the UN system: truth (1), justice (2), reparations (3) and guarantees of non-recurrence (4) (Teitel, 2000; de Greiff, 2012; United Nations, 2011, para. 19). It is important to stress that none of the individual measures belongs to only one of the four categories. They are mutually reinforcing and are to be applied in a ‘holistic approach’ (de Greiff, 2012, p. 32; United Nations, 2004, para. 26; 2011, para. 20; Werle and Vormbaum, 2016, p. 7).

3.1 Truth

A traditional tool of transitional justice is the installation of ad hoc truth commissions. Truth commissions are ‘temporary bodies set up to investigate patterns of human rights abuses committed during past conflicts’ (David, 2017, p. 156; see also Hayner, 2001). The first truth commissions were established in the 1980s as an alternative to criminal prosecution if the latter was not a feasible option. By now, truth commissions are considered an essential ingredient in their own right for a successful transition, especially due to their cathartic potential (UNHRC, 2013, paras 23–24, 27). They are often discussed in the context of a ‘right to truth’, victim participation and victim agency (Werle and Vormbaum, 2016, p. 83). The aim of truth commissions is to establish an official, credible record

of past abuses and, importantly, the acknowledgement thereof. In general, truth commissions do not just seek to find facts and establish a list of accountable individuals, but aim at reconciliation between victims and perpetrators (UNHRC, 2013, para. 47). They serve as a public forum for victims to tell their stories and have them heard when establishing the record of the historical truth (or ‘historical justice’; Teitel, 2000).

It took until 1998, more than fifty years after World War II, for the creation of the *Historikerkommission*⁹ and its investigation of certain aspects of Austria’s Nazi era. This *Historikerkommission*, however, cannot be considered a truth commission as understood in contemporary transitional justice, as will be explained below. For the Austro-fascist regime, no truth commission or anything like the *Historikerkommission* was ever established. Accordingly, Austria’s postwar era did not see institutionalised, comprehensive truth-seeking and truth-telling as a distinct transitional-justice measure.¹⁰ Therefore, in the ‘Study on how the memory of crimes committed by totalitarian regimes in Europe is dealt with in the Member States’ compiled by the EU in 2010, the table containing truth-seeking mechanisms implemented by EU states lists Austria with ‘no truth seeking mechanisms’ (European Commission, 2014, p. 244).

In sum, Austrians know and mostly agree on the main historical facts of the atrocities committed during the two fascist regimes. Nevertheless, there has not been the kind of truth-seeking and truth-telling transitional justice calls for – which aims not just for knowledge, but for acknowledgement of facts (de Greiff, 2012, p. 42).

Due to the lack of truth commissions in Austria’s postwar era, this subchapter could end here. However, transitional Austria features an interesting peculiarity that pertains to the issue of truth: its collective commitment to turning a lie, namely the victim-myth, into its truth. As already stated, Austria’s initial coping mechanism in its postwar era was to rely on its self-characterisation as Hitler’s first, passive victim (Uhl, 2001, p. 20). The history books used at schools (Wassermann, 2005), public discourse (or the lack thereof) (Uhl, 2001), the failure to encourage the return of Austrians who had fled (Wilder-Okladek, 1969, pp. 6–7, 36; Schwarz, 2004, p. 178) or the lack of memorials for the victims in World War II (Pelinka, 1991): it all points at Austrians’ collective repression of their complicity in the crimes of Nazism.

This misrepresentation of the truth could flourish and become part of Austria’s identity until a new generation started asking questions. Finally, in 1986, Austria reached a turning point with the ‘Waldheim affair’: when the former Austrian Foreign Minister and former UN Secretary-General Kurt Waldheim launched his presidential campaign in Austria, a journalist revealed that Waldheim had lied about his past in the *Wehrmacht* and his implication in the commission of war crimes during World War II (Lingens, 1986). This triggered a massive public debate about the past of Austria’s war generation and led to broad international critique against Waldheim (Uhl, 2003). He explained his past behaviour by claiming that he had just fulfilled his duty – a justification that was embraced and reiterated by the many Austrians who could identify with Waldheim (Pelinka, 1988, p. 80).

Waldheim won the presidential elections despite this controversy. However, this discourse had broken the silence about Austrians’ role during World War II. Slowly, an alternative narrative to the victim-myth became increasingly popular: the theory of collective responsibility. In 1988, fifty years after the *Anschluss*, President Waldheim expressed the first official excuse in the name of Austria for the crimes that Austrians had committed during World War II (Uhl, 2003, p. 346). In the 1990s, further official statements that acknowledged and apologised¹¹ for the Austrians’ complicity and responsibility for the atrocities of the Nazi regime followed (Uhl, 2003, pp. 346–347). In 1998,

⁹Which translates into ‘commission of historians’.

¹⁰Truth-seeking is often discussed by referring to the South-African Truth Commission as the poster child of this measure.

¹¹Chancellor Franz Vranitzky formally apologised on behalf of Austria to the survivors and relatives of those murdered by the Nazi regime on 8 July 1991.

Austrian Chancellor Viktor Klima finally established the *Historikerkommission* (Lessing and Azizi, 2006, pp. 228–229).

The fully independent *Historikerkommission* consisted of six members and three permanent experts; in total, approximately 160 people were engaged in the project. The commission had the limited mandate of inquiring and reporting on the illegal seizure of property on Austrian soil during the Nazi reign and on restitution and compensation programmes implemented by Austria after 1945 (Bischof, 2004, p. 25; Stuhlpfarrer, 2002, p. 240). In 2003, after four years, the commission completed its mandate, having published thousands of pages of reports. The output of the commission is broadly considered a success because it generally revisited the historical records of Austria during and after World War II (Bischof, 2004, p. 25). However, truth commissions as discussed in contemporary transitional-justice scholarship are not just installed to establish the ‘forensic’ truth by gathering historical facts of past abuses, but to create a public forum to give full weight to the voices of the victims (UNHRC, 2013, para. 24). The *Historikerkommission* came too late to satisfy this function, as fifty years had passed since the beginning of the atrocities. Most victims and perpetrators had died and the commission did not function as an open forum for truth-telling. Moreover, its mandate would have been too narrow to cover the complete story of the abuses in any case, as it exclusively encompassed Nazi looting of property. Thus, the *Historikerkommission* did not constitute a truth commission. It was rather a forensic fact-finding mission to account for past and plan future reparations.

In short, there were particularly grave deficiencies with the measure of ‘truth’ in transitional Austria. Nowadays, the theory of Austrians’ complicity in the Nazi’s collective crimes is accepted as the truth (Uhl, 2001, p. 28). However, it is questionable whether this can make up for decades of collective repression. The denial (or counter-truth, as one could call it) fostered by the Austrian society for up to five decades arguably changed the entire trajectory of the Austrian transition; it might also have permanently altered Austria’s collective memory (Schwarz, 2004, p. 177).¹² Section 4 addresses a possible consequences of this protracted denial.

3.2 Justice

Per definition, ‘justice’ and justice reform do not exclusively refer to measures of criminal justice, but also to ‘effective legal mechanisms for redressing civil claims and disputes, including property disputes, administrative law challenges, nationality and citizenship claims and other key legal issues arising in post-conflict settings’ (United Nations, 2004, para. 35). However, criminal justice receives by far the most attention; holding the perpetrators of systematic human rights abuses criminally accountable has always been discussed as one of the core means to cope with past abuses in transitional societies (Teitel, 2000, p. 27). While transitional-justice scholarship now accepts that criminal prosecution alone is not enough to achieve transitional justice, criminal justice is imperative to reinstitute trust and prove respect for human rights and the rule of law. This subsection focuses on criminal justice in postwar Austria; the subsection on reparations addresses some civil proceedings.

The history of Austria’s efforts to prosecute perpetrators of atrocities during the Nazi regime must be analysed in light of the occupation by the Allies, the bad postwar economy and the need to rebuild Austria’s cities and infrastructure.

When the Soviet troops gained control over Austria in April 1945, it was difficult to find a provisional government, as all of the parties other than the NSDAP had been prohibited during World War II. Many of the politicians who were part of the Second Republic’s first coalition

¹²Collective memory ‘is a process of reconstructing the representation of the past in the light of the present’ (Teitel, 2000, p. 70). Or, in the words of sociology: collective memories are ‘inter-subjectively constituted results of shared experience, ideas, knowledge and cultural practices through which people construct a relationship to the past’ (Misztal, 2003, p. x). The term ‘Austroamnesia’ refers to a hypothesis that goes even further: Birbaumer and Langewiesche suggest that post-World War II Austria could be diagnosed with collective post-traumatic stress disorder (PTSD) in neuropsychological terms, which could result in symptoms such as amnesia or irritation, or even aggression, if confronted with the events causing the trauma (Birbaumer and Langewiesche, 2006, pp. 169–175).

government came straight from concentration camps or prisons, where they had been detained for being political enemies; others returned from political exile.

Approximately 14 per cent of the adult Austrian population had been members of the NSDAP (Botz, 2006, p. 205). Consequently, the new government was confronted with the unpopular task of punishing a large part of the population, while most of the non-Nazi population did not consider Nazi-sympathisers the actual perpetrators (Hirt, 2012, p. 11). Yet, denazification was a 'question of survival' (Hirt, 2012, p. 12; Müller, 2005, p. 141), as Austrian sovereignty depended on it (Bischof, 2004, p. 19). Thus, the government quickly established the *Volksgesichte*¹³ by enacting the *Kriegsverbrechergesetz*, which also allowed the death penalty that had been abolished in Austria between 1919 and 1933 (Deak, 2006, p. 139). Fifty per cent of all Austrian judges and prosecutors had been dismissed due to their NSDAP membership, but there were not enough non-Nazi judges in Austria to fill all the positions at the *Volksgesichte*. Hence, one-third of the judges at the *Volksgesichte* were former NSDAP members (Deak, 2006, p. 140). From 1945 until 1955, almost 137,000 cases were investigated at the *Volksgesichte*; 23,500 of these cases led to sentences, and more than 13,600 of them were guilty verdicts. The *Volksgesichte* sentenced forty-three people to death, of whom thirty were ultimately executed (European Commission, 2014, p. 200; Botz, 2006, p. 205). In addition to the *Volksgesichte*, foreign military courts prosecuted Nazis within Austria from June 1945 until February 1946. Beyond the borders of Austria, foreign military tribunals prosecuted Austrian prisoners of war. Furthermore, two Austrians were prosecuted, convicted and executed in Germany at the Nuremberg Tribunal (Deak, 2006, p. 139).

As soon as the Allies left Austria in 1955, the *Volksgesichte* ceased to exist. However, even those convictions that did occur were ultimately short-lived: the three amnesties Austria granted between 1948 and 1957 had the effect that most of the convicted only had to serve a fraction of their sentences (Forster, 2012, p. 59). After 1955, only forty-eight cases on war crimes during World War II were tried, twenty of which resulted in convictions (European Commission, 2014, p. 200). The last Austrian prosecution of a World War II crime occurred in 1997, when the former euthanasia doctor Heinrich Gross, who had been working as a court-appointed psychiatrist in Austria after the war, was charged with killing at least nine handicapped children during World War II. He was finally held unfit for trial because of his advanced dementia (European Commission, 2014, p. 200).

Overall, Austria did not put great effort into holding the perpetrators of the crimes of the Nazi regime accountable. The government submitted to the Allies' demand for criminal justice for the sake of Austria's sovereignty. However, the prosecutions resulted in comparatively few convictions and even fewer of the sentences were fully served. As the main interest of the population was to rebuild the country and survive the difficult postwar years, most Austrians did not understand why the 'small fish' had to be prosecuted at all (Hirt, 2012, p. 11). The government adopted this attitude, as it had to appease the population to stabilise the young, fragile republic (Hirt, 2012, p. 10). Furthermore, when the disenfranchisement of former NSDAP members was lifted by 1949, the parties started to compete for the votes of the former Nazis and thus preferred to refrain from holding them accountable (Pelinka, 1988, pp. 74–75).

In sum, it is doubtful whether the criminal prosecutions after World War II contributed to the Austrian transition as a measure truly aimed at justice: the main intention was to satisfy the Allies. There was little acknowledgement of and no agency for the victims, who were mostly absent in postwar Austria and did not participate in the trials.

Other than some attempts in the US occupation zone, almost no steps were taken to investigate or punish the perpetrators of the Austro-fascist regime (Rathkolb, 1985, pp. 133ff.; Bischof and Leidenfrost, 1988). Moreover, it took until 2012 for the Austrian parliament to pass a law that declared most convictions, imprisonments and executions of the political opponents of the Austro-fascist regime illegal.

¹³Which translates into 'people's courts'.

3.3 Reparations

Reparations constitute the monetary dimension of transitional justice and are the only measure that benefits the victims directly, so truth-telling does not end up as mere ‘cheap talk’:

‘Like other transitional justice measures, reparations provide recognition to victims not only as victims but, importantly, also as rights holders. Moreover, they can promote trust in institutions, contribute to strengthening the rule of law and encourage social integration or reconciliation.’ (UNHRC, 2014, para. 9)

Accordingly, reparations carry an important element of recognition: the perpetrator acknowledges responsibility (but unfortunately not always culpability: UNHRC, 2014, para. 63) and the wrongfulness of the injury committed against the victim, whose status as a bearer of equal rights and human dignity is thereby recognised and restored (García-Godos, 2017, p. 178). The UN General Assembly confirmed in its 2005 Basic Principles that, in international law, ‘reparations’ include measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (United Nations, 2005, para. 18; de Greiff, 2006). Restitution serves to

‘restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.’ (United Nations, 2005, para. 19)

Compensation focuses on ‘any economically assessable damage’ (United Nations, 2005, para. 20) and rehabilitation refers to ‘medical and psychological care well as legal and social services’ (United Nations, 2005, para. 21). To some extent, the two categories that constitute symbolic reparations, namely satisfaction and guarantees of non-repetition (United Nations, 2005, paras 22–23), fall under the fourth measure of transitional justice, namely guarantees of non-recurrence discussed below. This subsection only addresses material reparations disbursed by postwar Austria.

In the context of transitional justice,

‘reparation programmes are administrative procedures that, among other things, obviate some of the difficulties and costs associated with litigation. For the claimants, administrative reparation programmes compare more than favourably to judicial procedures in circumstances of mass violations, offering faster results, lower costs, relaxed standards of evidence, non-adversarial procedures and a higher likelihood of receiving benefits.’ (UNHRC, 2014, para. 4)

As mentioned before, Austria did not consider itself responsible for the atrocities committed by the Nazi regime. It based this on the legalistic argument that it did not exist as a sovereign state during World War II and that the German Reich was the responsible state that had committed the crimes on Austrian soil. Consequently, the Austrian Republic did not assume state responsibility for the acts committed by the Nazi regime. While Germany could only join the UN as a sovereign state on the condition of establishing a programme of indemnification, Austria was not required to take such measures (Schwarz, 2004, p. 180).

Minutes of the first Austrian postwar government leaked and demonstrated the government’s attitude towards reparations for the Jewish victims of World War II: it was, literally, ‘in favour of dragging things out’ (Knight, 1988, p. 6). Accordingly, during the first thirty years after World War II, Austria only offered very few reparations to the victims of the Nazi regime, if any. What was offered was riddled with procedural obstacles, making it hard for victims to succeed with their claims (Forster, 2012, p. 63).

First, it must be reiterated that only a handful of the Nazis' victims were still living in postwar Austria. In Vienna, where 10.8 per cent of the population had been Jewish in 1938, only 0.5 per cent were Jewish in 1945 (Marin, 1979, p. 549). The faceless mass of victims who had fled Austria during the Nazi years and tried to claim reparations from abroad did not encounter great sympathy from the non-Jewish population. Some spiteful voices even maintained that the Jews only wanted to enrich themselves when their claims became more frequent (O'Donnell, 2011, p. 55).

The *Opferfürsorgegesetz* of 1945 entitled Social Democrats who had faced persecution during the Austro-fascist regime and resistance fighters of World War II to claim pension payments. However, the non-political victims of the Nazi regime, namely Jews and other minorities, were excluded from this law. Jewish apartments that had been confiscated by the Nazis were not returned, while property rights for political parties that had been expropriated during the Austro-fascist regime were restored through three Restoration Acts in 1949 (European Commission, 2014, p. 95). Thus, transitional Austria accepted some responsibility for the crimes of the Austro-fascist regime but not for the (non-political) victims of the Nazi regime. It is noteworthy that the victims of the Austro-fascist regime had remained in Austria and reconciliation was essential for a degree of social peace and co-operation. In contrast, most of those who had survived persecution by the Nazis were abroad and thus much easier to ignore in everyday life in Austria.

However, compelled by the Allies, the Austrian government enacted seven Restitution Acts between 1946 and 1949, which addressed the restitution of property that had been looted during the Nazi regime. Yet, these Acts were said to be 'full of loopholes, with inadequate worldwide notice and short claims periods' (Eizenstat, 2004, p. 281). It was difficult to prove ownership and Jewish refugees first had to regain Austrian citizenship (which many had lost during World War II) (O'Donnell, 2011, p. 62). Moreover, the Restitution Acts only provided for restitution of still existing, detectable and clearly identifiable property. Furthermore, exit taxes were imposed on certain objects before returning them to their rightful owners abroad. The first Restitution Act of 1946 only allowed the restitution of property that was held by the republic, whereas the third Restitution Act of 1947 made it possible to claim property in the hands of private persons and entities. This step faced great criticism by the Austrian population and some political parties, as most considered it harmful for the weak Austrian economy. Others (in particular the German-nationalist party, the VdU, predecessor of the current FPÖ, the Austrian far-right party), however, were against restitution not just for economic, but for anti-Semitic reasons. Nevertheless, the Allies insisted on maintaining the Act as it was (Forster, 2012, p. 58).

In 1995, fifty years after the end of World War II, the *Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus* was established. This fund was not aimed at mere restitution of looted property, but intended to distribute a compensation of 70,000 Austrian Schillings per person (now approximately 5,000 EUR) as a symbolic gesture to the victims of Nazi Austria (Forster, 2012, p. 63). Moreover, the creation of the *Historikerkommission* in 1998 with the mandate to investigate the Nazi looting showed how the climate for reparations for the victims of the Nazi regime finally changed in the 1990s. Slowly, Austria was starting to accept a moral (albeit not a legal) responsibility for the Nazi atrocities (European Commission, 2014, p. 95).

In 2001, the *Allgemeiner Entschädigungsfonds* for the resolution of complicated compensation claims was created following international negotiations. This fund covered claims for the loss of real estate, bank accounts, financial instruments and educational and occupational losses. For example, 7,000 USD were paid for lost apartment rights as a symbolic gesture. In 2009, the Board of Trustees of the *Allgemeiner Entschädigungsfonds* agreed on quotas for final payments for claims amounting to approximately 1.5 billion USD (European Commission, 2014, p. 96).

In 2008, seventy years after the *Anschluss*, the Austrian parliament decided to offer a one-time payment (called 'Remembrance Payment') of 1,000 EUR to resistance fighters and victims of the Nazi regime (European Commission, 2014, p. 96).

While Austria has made considerable progress in the domain of reparations, meaningful measures were only adopted many years after the end of World War II. The reparation programmes had a very slow evolution and are closely connected to the evolution of Austria admitting to its responsibility for

the Nazi regime's atrocities; in that sense, delayed truth and reparations (both material and symbolic in the form of official apologies or a Holocaust memorial (Uhl, 2001, p. 196)) went hand in hand in Austria.

3.4 Guarantees of non-recurrence

The last tool of the contemporary transitional-justice quartet carries various names, as it is not a measure per se, but 'a function that can be satisfied by a broad variety of measures' (UNHRC, 2015, para. 23; see e.g. Teitel (2000), who discusses guarantees of non-recurrence under the categories of reparative, administrative and constitutional justice). Guarantees of non-recurrence are 'inherently forward-looking and preventive' (UNHRC, 2018, para. 15), with the mediate aim of both recognising past abuse and building trust in a positive future (de Greiff, 2012). Measures that fall under guarantees of non-recurrence could be, inter alia, 'reforming institutions, disbanding unofficial armed groups, repealing emergency legislation incompatible with basic rights, vetting the security forces and the judiciary, protecting human rights defenders and training security forces in human rights' (UNHRC, 2015, para. 23). The Austrian Republic has taken a plethora of measures that could fall under guarantees of non-recurrence. Due to the limited scope of this paper, only a handful of measures can be discussed. In other words, the following is just an illustration and by no means exhaustive.

Denazification: lustrations, disenfranchisement and forced labour

A set of measures aimed at guaranteeing non-recurrence were targeted specifically at open Nazi-sympathisers. As mentioned above, one of the main goals of the Allies' occupation of Austria was to achieve its denazification. Moreover, they wanted to strengthen Austria's identity as a separate state to smother potential aspirations to ever become part of Germany again.

In 1945, the two main denazification statutes were enacted: the *Verbotsgesetz* and the *Kriegsverbrechergesetz*. The *Verbotsgesetz* banned and criminalised the NSDAP and any attempts to recreate or glorify Nazi organisations and acts, transferred Nazi property to the Austrian Republic and required former NSDAP members to register (European Commission, 2014, p. 208). The *Kriegsverbrechergesetz* established the *Volksgerichte* and added new crimes to the Austrian Criminal Code to allow the prosecution of Nazi war criminals.

More than 550,000 Austrians, or 14 per cent of the adult population, were registered as members of the NSDAP. As a consequence of the denazification, all of them lost their right to vote. Some also had to pay penalties and lost part of their property (Hirt, 2012, p. 15).¹⁴ Furthermore, they were subject to lustration. Lustration refers to

'the broad set of parliamentary laws that restrict members and collaborators of former repressive regimes from holding a range of public offices, state management positions, or other jobs with strong public influence (such as in the media or academia) after the collapse of the authoritarian regime.' (Nalepa, 2013, p. 46)

However, many of the registered NSDAP members had had jobs that were crucial for the functioning of Austria. The denazification left the war-torn country and its weak economy with a severe lack of qualified teachers, police officers, professors, judges and lawyers – professions that had seen particularly high numbers of NSDAP membership. The NSDAP members with those professions had been purged between 1945 and 1946 (to give an example, 75 per cent of the police and about 50 per cent of all judges and prosecutors had been dismissed). However, most of them were re-employed soon after because there was an acute shortage of non-Nazi professionals to fill the vacancies (Hirt, 2012, p. 53; Deak, 2006, p. 141).

¹⁴After the first two years of the occupation, approximately 960 people had been removed from influential positions in the public and private sphere, 70,000 (of 300,000) civil servants and 36,000 private-sector employees had been dismissed.

To react to the discontent among the Austrian population that considered it unfair that all NSDAP members, whether ‘big fish’ or ‘small fish’, received the same punishment, a 1947 amendment to the *Verbotsgesetz* introduced two categories of former NSDAP members: the *Belastete*, who had been prominent and active Nazis or had committed certain offences, and the *Minderbelastete*, who had only been passive party members.¹⁵ There were 43,468 *Belastete* and 487,067 *Minderbelastete* (European Commission, 2014, p. 208).

A specific measure of denazification was forced labour for Nazis to reconstruct Austria, with a slogan along the lines of ‘re-education through atonement’ (Berg, 2006, p. 201); 14,022 Austrians were assigned to work at some point between 1946 and 1948. In 1948, the measure was not renewed, as the government’s focus shifted from retribution to rehabilitation and reconstruction (Berg, 2006, p. 203). It is noteworthy that the former NSDAP members who were forced to work had to wear swastikas – a parallel to the yellow star the Nazis had imposed upon their Jewish victims. However, forced labour has more of a punitive than a preventive character (Teitel, 2000, pp. 158–159).

In 1948, the Austrian parliament enacted an amnesty for the *Minderbelastete*, which exonerated 90 per cent of the former NSDAP members. Their denazification process was now over and their rehabilitation completed without any further, targeted measures as guarantees of non-recurrence (Hirt, 2012, p. 89). The Austrian government had a very practical reason for taking this step, aside from a lack of support for the denazification measures among the Austrian population: parliamentary elections were scheduled for 1949 and, by re-enfranchising the former NSDAP members, the parties could court for the former Nazis’ votes (Deak, 2006, p. 141).

A third and final amnesty of the short-lived denazification efforts was granted in 1957, which now also reinstated all rights for the *Belastete* (Hirt, 2012, p. 94). Thus, the measures taken to denazify the Austrian society only lasted three years for the *Minderbelastete* and a bit more than a decade for high-ranking NSDAP members.

A very similar policy was instituted in Germany, with the same fate. The scope of the Allies’ denazification policy was too broad (Teitel, 2000, p. 159). It is questionable whether these measures prompted any former Nazis to change their mind about their ideology and thus contributed to non-recurrence. Teitel came to the conclusion that the denazification policy in Germany failed (Teitel, 2000, p. 159).

Guarantees of non-recurrence aimed at the general public

Only a few guarantees of non-recurrence were implemented in postwar Austria that were directed at the general public; this makes sense in light of the victim-myth that portrayed Austrians who had not been direct perpetrators as innocent victims or war heroes.

Education and the content of history books used at schools to teach new generations about the past of their country are especially important for a peaceful future (see Brown (2012) for a discussion on the importance of memory work). The Allies had great influence on Austria’s postwar school system (Markova, 2010, p. 75). The ratio of teachers who had been registered as members of the NSDAP was particularly high – around 60 per cent of the primary-school teachers and approximately 50 per cent of the high-school teachers had been affiliated with the NSDAP (European Commission, 2014, p. 208). Because most of them could go back to teaching after the first amnesty of 1948, the indoctrination of the next generation with Nazi ideology was a real concern. Consequently, the Allies supervised the school system closely and every decision required their approval until they left Austria in 1955 (Markova, 2010, p. 108). Yet, history books used at school after 1955 were not sufficiently explicit and critical of the Nazi regime and its crimes and of Austria’s involvement (Wassermann, 2005; Markova, 2010, p. 108). Moreover, many Austrians recount that they only learned very little to nothing about Austria’s past as part of Nazi Germany at school, as some teachers simply skipped that part of history.

¹⁵The terms *Belastete* and *Minderbelastete* translate roughly into ‘implicated’ and ‘implicated to a minor extent’; they could also be translated with ‘burdened’ and ‘less burdened’. Hence, the terminology in the *Verbotsgesetz* might be a euphemism in and of itself.

In the very first analysis of Austrian World War II memorials in 1991, political scientist Anton Pelinka stated that Austrian war memorials ‘unequivocally and irreconcilably contradict the “philosophy” of the Second Republic; there is no reference [here] to Austria’s liberation by Allied forces, no reference to Austrian resistance, no mention of Austria’s German occupation’ (Pelinka, 1991, p. 7). The narrative they told was about the fallen soldiers as war heroes. Austria only dedicated an appropriate memorial in the public sphere to Austrian Jews and other victims of the Nazi regime with the unveiling of the Holocaust Memorial in 2000, fifty-five years after the end of World War II (Uhl, 2001, p. 196).

4 Appraisal of transitional justice in Austria

More than seventy years have passed since the end of World War II, which seems like a sufficient period to engage in a retrospective evaluation of the outcome of Austria’s transition. Yet,

‘[i]t may ... take years or even decades to be able to fully assess whether transitional justice has been successful in achieving these lofty goals. Finally, for the emergence of international norms and for a goal like reconciliation, it may take many generations to truly be able to determine whether transitional justice has worked.’ (Reiter, 2017, p. 271)

There is no agreement in transitional-justice scholarship on the determination of a transition’s conclusion, goals and, if goals have been identified, their successful achievement (Bell, 2009, pp. 10–11). Nagy criticises that transitional justice

‘implies a fixed interregnum period with a distinct end; it bridges between a violent or repressive past and a peaceful, democratic future. Notions of “breaking with the past” and “never again”, which align with the dominant transitional mechanisms, mould a definitive sense of “now” and “then”. This can problematically obscure continuities of violence and exclusion.’ (Nagy, 2014, p. 218)

Pablo de Greiff’s theory of transitional justice states that the final ends of transitional justice are democracy (or the rule of law) and reconciliation (de Greiff, 2012, p. 48; UNHRC, 2012, para. 21; see also Reiter, 2017, pp. 270–271). De Greiff points out that the accomplishment of these two aims is neither a direct nor a necessary consequence of a successful implementation of transitional-justice measures, as success also depends on many other factors such as constitutional reforms or economic restructuring.

For example, strong evidence speaks for a successful attainment of the final aim of democracy in Austria, as it ranks among the most democratic countries in the world.¹⁶ However, the implementation of well-designed transitional-justice measures is but one of many factors that might ultimately contribute to a functioning democracy. Thus, Austria’s stable democracy and strong rule of law are not necessarily the result of its past efforts to accomplish transitional justice; nor does it allow the conclusion that transitional justice has been served in Austria, as democracy and transitional justice are not synonymous. But whatever the reason for Austria’s successful democratisation, Austria is not undergoing a transition from an authoritarian regime to democracy anymore: ‘the established democracy “remains a site of non-transition” where the democratic “idealized endpoint” already exists’ (Winter, 2013, p. 225, citing Green, 2012, p. 129).

While the quality of Austria’s democracy might be appraised quite easily, the other final end of transitional justice, namely reconciliation, is much harder to discern in the Austrian context. Transitional-justice scholarship has not yet agreed on a definition of reconciliation (Quinn, 2009, p. 5). Kofi Annan described reconciliation as ‘building or rebuilding relationships today that are

¹⁶In the 2018 Freedom House Index, Austria had a score of 94/100; see Freedom House (2018); Austria scored high points in relation to the rule of law, but lower points on access to information in SGI’s 2017 ranking of the quality of democracies: Sustainable Governance Indicators (2016).

not haunted by the conflicts and hatreds of yesterday' (United Nations, 2004, p. 1). Pablo de Greiff, on the other hand, draws on the term of resentment to describe an *unreconciled* society; he states that 'an "unreconciled" society ... would be one in which resentment characterizes the relations among citizens and between citizens and their institutions. It is one in which people experience anger because their norm-based expectations have been threatened or defeated' (de Greiff, 2012, p. 49). De Greiff then concludes *e contrario* that reconciliation means that 'citizens can trust one another *as citizens* again' (de Greiff, 2012, p. 50, emphasis in original).

An appraisal of the final end of reconciliation is hardly practical in the Austrian context: the vast majority of the Nazis' victims were either murdered or, if they survived, have never returned to Austria.¹⁷ Consequently, almost none of the victimised citizens remained in transitional Austria and the former perpetrators and victims never resumed co-existence in everyday life. Thus, a means considered beneficial¹⁸ to reconciliation called the 'contact hypothesis'¹⁹ was never possible:

'The basic concept is that more contact between individuals belonging to antagonistic social groups tends to undermined the negative stereotypes they have of each other and to reduce their mutual antipathies, thus improving inter-group relations ... in short more contact means less ethnic or cultural conflict, other things being equal.' (Forbes, 2004, p. 70; see also Hewstone and Brown, 1986; Stephan and Stephan, 2001; Gaertner and Dovidio, 2000; Aiken, 2010, p. 183)

Of course, it must be stressed that even societies with the chance to put the contact hypothesis into action are not guaranteed to succeed with reconciliation (Donnelly and Hughes, 2009, p. 169).

Austria's transition did not foster reconciliation, neither under Annan's nor under de Greiff's definition of reconciliation: almost no one was left within the Austrian society who would have felt resentment vis-à-vis their fellow Austrian citizens and relationships were never rebuilt. The victims of the Nazi regime never learned to 'trust one another [i.e. Austrian citizens] *as citizens* again' (de Greiff, 2012, p. 50, emphasis in original).

Nowadays, almost none of the former surviving victims are still alive. Hence, Austria might even be an 'irreconcilable' society that failed at reconciliation until it was too late. The theory of transitional justice posits (at least implicitly) that being an unreconciled society might have actual implications for contemporary Austria, as '[t]he effect of past experiences can be passed on from generation to generation' (David, 2017, p. 171).²⁰ But *how* do Austria's past failures with transitional justice affect present-day generations? What is the causality between the current situation in Austria and its lack

¹⁷Austria has also never encouraged the victims to return to what was once their home.

¹⁸See e.g. Aiken (2010, p. 184): 'A 2008 study carried out by researchers from the University of Ulster and Queen's University Belfast provides substantial evidence to suggest that increasing levels of intercommunity contact through the integrated "community relations" approach has had a measurable causal effect in promoting more positive intergroup relations in Northern Ireland. In particular, this study shows that increased contact has been highly effective in helping to increase cross-community tolerance, trust, friendship, understanding and positive affect, while at the same time reducing negative perceptions of intergroup threat, anxiety, bias and prejudice.'

¹⁹Which has been translated into the concept of 'instrumental reconciliation'; see Nadler *et al.* (2008).

²⁰According to the literature, the legacy of collective crimes might live on: 'philosophers such as Larry May use the term "metaphysical guilt" to refer to the idea that simply sharing a group identity with perpetrators can itself confer a kind of responsibility and moral taint, even on non-perpetrating members of the group' (Radzik, 2001, p. 456). Following this concept, non-perpetrating Austrians might have felt such 'metaphysical guilt' during Austria's transition. Teitel's view on inter-generational justice in the context of delayed reparations paid by successor generations is in line with this idea of metaphysical guilt: '[t]hrough the initial wrongdoing and liability originate in predecessor generations, such evil legacies imply long-standing societal concerns, often with grave implications for contemporary and future successor generations. In considerations of criminal justice, similar conceptions of collective responsibility emerge in transition. When unaddressed after time, the sense of injustice is only heightened. ... [A] contemporary regime's succession to old obligations demonstrates how the assumption of collective responsibility constitutes a state's political identity over time' (Teitel, 2000, pp. 140–141). Clearly, an evaluation of the psychological and sociological effects of Austria's transition go beyond the scope of this paper. Nevertheless, this serves as a preview of potential, interesting findings for transitional justice; the example of Austria could be used to measure how a transition without reconciliation impacts a society in the long run.

of reconciliation after World War II? How can proponents of transitional justice claim that '[t]ransitional justice ... can mollify some of the negative consequences of traumatic experiences' (David, 2017, p. 171)?

This leads the author to the conclusion that it is not possible to aptly judge Austria's transition within the framework of transitional justice. The immediate reason for this dead end is the lack of clear, quantifiable goals and suitable metrics for a scientific appraisal. Yet, these shortcomings might be just a symptom. The underlying issue might be that the current model of transitional justice offers neither the tools nor the theory to assess generations of historical developments after transitions and that the transitional-justice model is ill-equipped to evaluate the non-linear course of long-past transitions. No tools exist to assess the causal link between the current state of a democracy and its transition that started more than seventy years ago. If transitional justice claims that postwar or post-conflict societies are better off if they strive for democracy and reconciliation, should we not know how failed reconciliation ultimately affects societies?

5 Conclusion

The preceding sections summarised Austria's post-World War II transition from two consecutive, abusive regimes to a functioning democracy. An evaluation of what could now be dubbed transitional-justice measures shows that Austria was reluctant to accept its collective responsibility vis-à-vis the victims of World War II; accordingly, the implementation of the transitional-justice measure of 'truth' was particularly deficient. Another defining factor of Austria's transition is that it never encouraged the surviving victims of the Nazi regime to return. This irrevocably changed not only Austria's demography, but possibly also its identity.

An appraisal of Austria's transition in light of the two final ends of transitional justice, namely democracy and reconciliation, culminates in two conclusions. First, Austria attained the goal of democracy but failed with reconciliation. What remains more than seventy years later is a democratic, but unreconciled society. Second, the current model of transitional justice is ill-equipped to assess the non-linear course of long-past transitions. Thus, transitional justices might be able to diagnose an unreconciled democratic society – but it has no prognosis or cure for the unfortunate patient.

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