

COMMERCIAL JUSTICE IN THE BALKANS: THE EU, NEO-LIBERAL COMMERCIAL LAW AND DEMOCRACY

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Traditionally, transitional justice (TJ) focused on the accountability of perpetrators of gross human rights violations such as torture. The Essex TJ network was originally strongly linked with the Human Rights Centre in the University of Essex. However, it is increasingly recognized that violations of civil and political rights are often closely linked with violations of socio-economic rights or the pursuit of economic policies that can only be implemented by political oppression. It raises crucial questions for everybody working on TJ as to whether the aims of TJ, such as lasting peace and democratisation, can be achieved without addressing the socio-economic causes and consequence of conflicts or oppression; which socio-economic issues to include into the TJ agenda (eg land issues, natural resources, the power of multinational companies?); and how best to integrate them in order to maximize the chances of successful transitions. However, no theoretical analysis exists to date to assist practitioners and policymakers with how to accomplish this. This is particularly because of the ongoing divide between the Human Rights community on the priorities between Political and Civil rights and Economic, Social and Cultural Rights. Many of the Truth and Reconciliation Commissions dealt with ESC rights but often the reports were shelved and the recommendations not implemented fully.

Democratic Legitimacy

The Network includes academics, practitioners and policymakers working on Transition Justice and includes UN practitioners, NGOs, lawyers, sociologists, philosophers and economists. It is a loose structure which is headed by an academic; the meetings are funded by a number of foundations such as the British Academy, the Leverhulme Trust and University sources. Some of the practitioners are privately funded, some are part of other NGOs, and some are funded by UN money. There are two issues pertaining to legitimacy: i) is the network itself democratic? (ii) Is the substance researched (rather than the theory) by the participants of the network democratic? This paper will consider only the latter issue. It will involve ESCHR and whether these issues can be implemented successfully in transition countries. The network is agonising on whether the participants' research should prioritize Political and civil Rights rather than ESC rights, this paper will support the importance of economic and social rights in transition countries. As well as this my paper will show how the transition justice involves not only situations of violent conflicts but also the transition between commercial systems. The commercial paradigms between communism and capitalism are a tense flash point. As well as this there are other tensions between different sorts of capitalism, transition countries need to consider which is the best model to adopt. I will illustrate these tensions by research that I was involved in the Balkans where I was privileged to draft some company law legislation. This will involve the tensions between the EU *Aquis Communautaire*, the neo-liberal economic agenda and the powerful multinational companies.