

Paolo Caroli, *Transitional Justice in Italy and the Crimes of Fascism and Nazism* (Oxon/New York, NY: Routledge 2022), pp. 268, ISBN 9781032226224.

Kim Stanton, *Reconciling Truths. Reimagining Public Inquiries in Canada* (Vancouver: UBC Press, 2022), pp. 325, ISBN 9780774866668.

INTRODUCTION

An unresolved difficult past never fully goes away, rather simmering below the surface, ready to boil over when the right time arrives. The most recent years are a testament to that, with changes to cityscapes all around the world, be that as an aftermath of the Black Lives Matter movement in post-colonial countries or the new wave of post-communist iconoclasm in Central and Eastern Europe in the second decade of the 21st century.

While most visible, these modifications of public spaces are only some of the many ways transitional justice operates in the present day. In their two formidable recent works, Paolo Caroli and Kim Stanton put the ways of (not) coming to terms with past atrocities in two countries, Italy and Canada, respectively, in the spotlight. Despite the fact that the World War II (WWII) Italian experience and the abuses committed to Indigenous peoples and various minorities by settlers in Canada are worlds apart, as the two books show, the different ways of coping with trauma through law speak to one another and should be studied together, allowing us to uncover the different yet complementary faces of transitional justice.

Interestingly, and to a certain degree disappointingly, in spite of presenting a wide array of perspectives on the matter, both Caroli (9-18) and Stanton (18) rely heavily on the work of Ruti G. Teitel on transitional justice, which, while seminal, could benefit from a further-going

reimagination to better fit the Italian and Canadian cases than the one authors engage in; nevertheless, as I show below, despite walking on the well-trodden conceptual paths, both academics conduct successful analysis of their case studies. Also, some aspects of structure of the two books are unconvincing (Caroli's decision to split the study of the Togliatti amnesty into two parts of his work and Stanton's choice to in certain instances follow chronological order, and in other not), but these of course remain the authors' prerogative and do not pose any major issues for the reader.

Importantly, while Caroli clearly links the matters of transitional justice to the closely related idea of collective memory in his *Introduction* (not providing, however, a clear definition of his understanding of the term), Stanton does not use the concept at all, in spite of being aware of the importance of memory for her investigations, acutely remarking that “[h]ow a government uses law to frame questions about past injustices shapes how a society formulates its responses to the shadows of its past” (19).

Before moving on to a deeper analysis of the two works, one final introductory point needs to be made on the dedications by two authors, which, in an almost Levinasian way (echoing his two-faced dedication in *Otherwise Than Being or Beyond Essence*), speak both to those close to them and to the wider community of those impacted by the atrocities that are the background of the legal mechanisms analysed in the respective books, thus setting the tone for later investigations.

1. PAOLO CAROLI'S JOURNEY ON ITALY'S LONG, WINDING AND UNSUCCESSFUL ROAD TO TRANSITIONAL JUSTICE

In three parts and five chapters, Caroli succeeds in providing both a detailed and succinct analysis of the Italian peregrinations in search of transitional justice. Published as a part of

Routledge's *Legal History Series*, the book opens with useful timelines at the beginning, introducing the reader to both general Italian political history and one regarding transitional justice in the country in the 20th century.

Caroli convincingly explains his choice of Italy as a case study of mechanisms of transitional justice, portraying it as understudied compared to other European countries in the context of legal responses to WWII and its aftermath (although it could be polemised whether Austria has already been properly researched from that perspective), an example of a post-atrocity amnesty unique in the geographic and temporal context. He argues that the country's experiences constitute "an ideal landmark to discover the complexity of the interdependencies between time, historical memory and the use of the criminal law," vital all the more so in the present day, given that the current crises reinvigorated the debate about fascism, which needs to be studied once again (2-3).

The first part of the book, *The Italian experience of transitional justice*, is composed of two chapters: *Historical, legal and judicial context of the transition* and *The Togliatti amnesty*. In the former, the author introduces the various elements of transitional justice in Italy, using a presentist perspective to place them within a broader context. He first presents a good, if overfootnoted, historical overview of the events following the 1922 Mussolini's March on Rome and in particular WWII, engaging in a meticulous analysis of the criminal prosecution of Fascists starting in 1943 and continuing until the 1946 Togliatti amnesty, with the latter being a focal point for the author's ruminations, and then demonstrating its aftermath until 1966.

The book's second chapter is focused on the most important mechanism of transitional justice in Italy from the author's perspective – the Togliatti amnesty. Perceiving the amnesty as a paradigm of the Italian transition, Caroli first provides a general overview of the amnesties of all the amnesties in the country's history since the unification in the second half of the 19th century; he then moves to Togliatti amnesty's more in-depth analysis in the second part of the

book, *A critical approach to the transition*, with the third chapter entitled *The Togliatti amnesty within the framework of transitional justice*. In it, the author engages with the amnesty on several different levels, looking into this mechanism of transitional justice from several different viewpoints: criminal law, history, transitional justice, and contemporary international law.

In turn, in the fourth chapter, *The Italian experience within the framework of transitional justice*, Caroli moves on to a comparative engagement, contrasting the Italian transitional justice mechanisms with those of Spain, South Africa, and Europe in general. In regard to the case of Spain, the author remarks upon the differences between amnesties in the two countries, calling the Italian an ‘amnesic’ amnesty, and Spanish an ‘oblivial’ amnesty: “the Spanish outcome is the product of a declared choice favouring impunity and oblivion, of an oblivial transition; in contrast, the Italian outcome is the product of an amnesic transition, wherein various factors led to authentic voids, as regards both justice and historical memory” (183).

With regard to South Africa, Caroli focuses in particular on the Rainbow Nation founding myths established following the transitional justice process in the country, demonstrating that in Italy, there has not been any such relation to amnesty, with a focus on the myth of widespread anti-Fascism taking centre stage, having “transformed a phenomenon that had involved a restricted part of the population (anti-Fascism) into a national phenomenon at the basis of the Constitution” (189).

Moving on to the analysis of the European memory policies, Caroli situates the Italian transitional justice mechanisms within the various European ways of coming to terms with the WWII and its aftermath, comparing Italy’s reckoning with the past with that of Germany and its Nazi legacy, ultimately reaching the conclusion that “Italy did not face national responsibilities and it did not deal with Fascism,” as “it was not the Italian society of the post-war period, but rather the Italian society of the last 70 years, as well as its political class, that

have been unable to” engage in the processes of transitional justice (218-219). The chapter closes with the study of Italian memory politics towards the Holocaust after WWII, labelling them a ‘self-acquitting myth’ (236).

The final, third part, *Facing the present, facing the future*, is composed of only one chapter, *The legacy of the Italian transitional justice*, perhaps most interesting from an international reader’s perspective. Caroli remarks upon the various faces of the country’s processes of coming to terms with past atrocities, speaking about the passing of the responsibility for settling of the accounts between the legislator and the judiciary (239), the fact that the Togliatti amnesty was passed neither by a referendum nor by the parliament (240), and that, ultimately, even if at one point “Italy questioned the previous memorial pact, [...] unlike in other European countries, this phase gave way to revisionism that resulted in a new self-acquittal” (241).

Caroli then moves to deliberations on the future of transitional amnesties as well as the role of criminal law in the protection of historical memory, closing with his observations on contemporary Italy’s particular balance between amnesty and amnesia, remarking that the transitional process is still ongoing, which presents a difficult dilemma – “the population, in its majority, does not reason on the basis of history, but it relies on the simplifications provided by collective memory” – in the end posing the vital question – how to cross “the critical reasoning of history with collective memory, without incurring the abuse of the latter” (264).

2. KIM STANTON AND THE MANY ROUTES OF CANADIAN TRANSITIONAL JUSTICE

In five chapters, Stanton provides a riveting analysis of the many different transitional justice approaches that Canada took over the years in an attempt to rectify its many different instances of state violence towards the Indigenous peoples and various minority groups. Published as a part of UBC Press’s *Law and Society Series*, the book represents an almost two-decades author’s journey that began as an observer to the National Reconciliation Commission in Ghana, spiking

her interest in the legal institution of a truth commission (207), which she then realised as a lawyer and a researcher, hoping to “provide an analysis of the commission of inquiry mechanism in order to improve how these inquiries function in Canada, particularly those established to address issues in relation to Indigenous peoples” (139). A chronological list of referenced Canadian commissions may be found in a valuable appendix to this book.

Following *Introduction: Setting the Context*, in which Stanton details her life journey, as well as explains her understanding of truth commissions and public inquiries, and their relevance in the Canadian context, the first chapter, *Inquiries in Canada* provides an overview of the use of the public inquiry mechanism as used by colonial governments for many years, even before the Confederation was established. As the author observes, this in theory useful legal mechanism “has often allowed non-Indigenous governments and their citizens to appear to have paid serious attention to an issue without necessarily taking responsibility for their role in creating the issue in the first place or for preventing its recurrence” (12). Following a successful attempt at providing a new definition of a truth commission (17), Stanton provides an overview of the history of truth commissions, their theoretical analysis, and their study in three established democracies – Germany, Ireland, and Australia – looking for a way to place the Canadian Truth and Reconciliation Commission within the established framework (31).

The second chapter, *The Mackenzie Valley Pipeline Inquiry*, provides an overview and the impact of the Berger Inquiry, which, as Stanton shows, was the first modern public inquiry in Canadian history, with a media strategy and an approach that allowed the general public to realise the issues heard concern not only the local inhabitants but all Canadians (46-47). As she remarks, “the extraordinary attention given to the inquiry generated public interest”, thus leading to broader public education on the issues faced by the Indigenous peoples (52-53). On this basis Stanton acutely observes towards the end of the chapter that public inquiries, while

independent, are political creatures and may “be malleable and adaptable under the leadership of someone committed to building a complete picture of the issues presented” (56).

In the third chapter, *Inquiries and Residential Schools*, the author turns her attention to the Canadian reckoning with the atrocities committed in residential schools (IRS), which existed between the 1880s and 1996, when the last one closed (68). As Stanton remarks, the success of the Berger Inquiry, as well as a particular moment in time (the adoption of the Charter of Rights and Freedoms in 1982 and the 1990 Oka Crisis) (69-70), gave way to various legal mechanisms being employed to address the question of residential schools abuses to the Indigenous population in Canada. In this context, she critically analyses criminal prosecution, civil litigation and alternative dispute resolution mechanisms that were employed in attempts to rectify “the profound effects of the IRS system on survivors and their families and the more than 100 years of its operation resulted in a legacy experienced in Indigenous communities across most of Canada” (91).

The fourth chapter, *Canada’s Truth and Reconciliation Commission*, is devoted to the eponymous legal institution (TRC), with Stanton tracing its origins and work to completion in 2015. She also makes a number of general observations on the inner workings of this transitional justice mechanism, noting their importance in established democracies, such as Canada (127), arguing that their advantage “is the ability to create an incontrovertible historical record and enable significant public education” (118), and remarking upon the role of the media and civil society in the truth-seeking process. She also studies the role of public apologies in the transitional justice process on the example of the Canadian government’s 2008 apology directed “to survivors of the IRS system” (129), observing the correlation between increased public acts of contrition and social education (130).

In the fifth, final chapter *Inquiries and the Crisis of Missing and Murdered Indigenous Women and Girls* (MMIWG), Stanton turns her focus to several public inquiries (Manitoba’s

Aboriginal Justice Inquiry, the Oppal Commission in British Columbia, and the National Inquiry into MMIWG), as well as “a number of other domestic and international processes, that have made recommendations to address the tragedy of MMIW” (139). The author details the story of first international attempts to force Canada to address the issue, followed by local inquiries and ultimately a national one in the years 2016-2019, which proved particularly challenging: on the one hand, “no inquiry (or at least no inquiry related to Indigenous issues) has been held in Canada with so much goodwill behind it at the outset;” on the other, “no inquiry has squandered such goodwill so spectacularly” (175), with Stanton detailing the issues surrounding the work and reception of the National Inquiry.

Ultimately, in *Conclusion*, the author makes a number of more general observations on the Canadian transitional justice process, its issues, successes and failures, remarking, with a return to the questions of collective memory, that “there are two ongoing narratives in Canada – one is of reconciliation, one is of indifference;” however, with the establishment of the Truth and Reconciliation Commission, “Canada embarked on a voyage into a new frontier – an opportunity to formulate a new narrative. Time will tell whether we have navigated the journey into this frontier any more effectively than in the past” (199).

CONCLUDING REMARKS

Amnesty and truth commissions – two very different mechanisms of transitional justice employed in two different contexts and studied in two books here – are used to achieve, however, a similar goal: social reconciliation and coming to terms with a difficult past. Both Caroli’s and Stanton’s respective works show how difficult these transitional processes are: whether a society chooses to “forgive and forget” – as in the case of Italy – or to bring back the truth to the public and to apologise – as in the case of Canada – in the face of systematic abuses of power on behalf of the state, there seem to be no perfect or immediate solutions.

Out of the two countries, however, it needs to be stressed that Canada, unlike Italy, has become the difficult process of answering the past atrocities which, in spite of its slowness and other issues, has succeeded in rectifying at least some of the many injustices of the yesteryear. In turn, Italy seems to still be wrapped up in its own narratives created in place of the truth. This shows that the only way a change to the official narrative may be instigated is by the broader society, not the politicians – Canada would not be as far down the reconciliation road as it now if not for the work of the Indigenous communities, civil society, lawyers and members of the media engaging in public education. One can only hope in the near future that Italy will also be able to follow in Canada’s footsteps – and Caroli’s and Stanton’s respective works brilliantly raise the awareness of issues relating to coming to terms with the difficult past not only in regard to the two countries in question but also to all societies in transition.

The main remaining question is whether the current mechanisms of transitional justice are well-placed to deal with these issues as they are taking place not immediately after a transition but in a moment when the past in question is moving further and further away, while the answer to this issue cannot be found in either of the two books, necessarily descriptive in nature, they, and other positions adding to the ever-growing fields of transitional justice and memory studies, will hopefully serve as the basis of prospective research that will lay new paths towards truth, social justice and reconciliation.

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