

DOSSIER: RHETORICS OF JUSTICE IN EMERGING DEMOCRACIES

CE QUI PRÉCEDE LE PARDON : PERPETRATORS, AMNISTIE

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ABSTRACT. The South African Truth and Reconciliation Commission has become exemplary of a successful democratic transition accomplished without any external mediation or intervention. As such, it carries a fundamental lesson regarding peace as a practical human right: peace with others – civil peace allowing not only for survival but for a better life –, and peace with oneself, meaning an inner acceptance of each individual's new status as citizen. The paper presents and interprets the spectacular and narrative, social and intimate gesture and moment through which apartheid-era criminals contributed to the realization of a democratic transition. The perpetrators are involved in the singular, narrative and performative foundation of social peace, operated through an unprecedented process of non judicial justice.

Keywords: forgiveness, amnesty, justice, perpetrators, rhetoric

**“JUST PROPORTIONALITY” AND SOCIAL SIGNIFICANCE:
RHETORICS OF CRIME IN THE NEWSOUTH AFRICA**

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ABSTRACT. Though former South African President Thabo Mbeki gained international notoriety as an AIDS-denialist, in South Africa it may be that his rhetorical responses on the topic of violent crime were as important in damaging his reputation with white citizens in particular. This article argues that there is a family resemblance between Mbeki's rhetoric of AIDS-denialism and his responses to claims that violent crime was increasing and affecting the lives of most South African citizens -- Mbeki's rhetorical responses treat social phenomena, whether a pandemic or a crime wave, primarily as constructs of a particular political view or interest if not simply as moral panics. Thus Mbeki was able to treat both claims that AIDS and violent crime were major threats to South Africa as white constructs that stemmed from racial suspicions about black South Africans and black men, in particular. An anti-rhetoric of rape, in particular, linked Mbeki's suspicion of both medical and criminal discourses. This article will explore the possibility that the dominant international intellectual models about crime not only influenced then President Mbeki's suspicion of crime coverage but, by extension, helped fuel a wider suspicion of any negative reporting. Mbeki's rhetoric on crime, however, has a rather more respectable genealogy than his rhetoric of AIDS-denialism. Influential strands of media theorising about crime hold that media exaggerate the extent of crime, particularly violent crime, demonise certain racial minorities, and produce fearful citizens. This article contends that much of this theorising is conceptually limited, even incoherent, in that it cannot account significantly for questions of under-reporting crime or compare crime coverage nationally or

internationally in any coherent way. It returns to Graber's work to draw particularly on her notion of 'just proportionality' to argue that this provides a benchmark for comparative, non-normative judgments of coverage on crime.

The article assesses some of the difficulties of applying the notion, given problems surrounding crime statistics in South Africa and elsewhere. It draws on a significant data-base of some 400000 South African media articles (print and broadcast) for 2005 and 2006 analysed by Media Tenor South Africa. The article shows that many articles about crime coverage in the USA which have been drawn on by South African President Mbeki and others are reacting to a proportion of crime coverage that exceeds the South African case by up to 1000%. The article argues that both white and black critics of media coverage of crime provide part of the context and truth of the shortcomings of crime coverage in South Africa.

Keywords: rhetoric of crime, media coverage, just proportionality, justice, social significance

LA CONDITION DYSTOPIQUE DU POSTCOMMUNISME

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ABSTRACT. The communist regime was totalitarian also through its so-called revolutionary project of transformation and complete ownership of space. Especially of the urban space, through a gigantic effort of urban development and 'modernization' of a country like Romania whose population, economy and lifestyle were to a great extent rural. This modernization that wanted to be original was as equivocal as incomplete. The metaphysical and revolutionary project of communist modernization of urban spaces failed there where the capitalist modernity scored one of its most incontestable victories: in the creation of a public space and in the setting up of a clear theoretical and practical distinction between public and private. I will argue that the communist regime's scorn both for the public space representing the citizens' spontaneous creation and practice and for the invention of private spaces as experimental zones of new forms of subjectivity left traces in the social tissue: if the architecture did not know, did not want, or simply could not materialize the demand for public spaces, the people, in their turn, did not know, could not and above all did not want to learn the practices of living together in a city or, in other words, those of urban civility. Among other consequences, this makes the distinction public/private a tool very little useful in helping us understand the communist space, and even less useful in noticing the essence of post-communist transformations, especially since the present dynamics of urban spaces remains less and less loyal to the conceptual tradition of modernity.

Keywords: communism, postcommunist society, public space, private space, urban space, urban practices, precariousness, modernization.

“REVOLUTION OF THE RULE OF LAW”: TRANSITIONAL RULE OF LAW IN POST-COMMUNIST ROMANIA

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ABSTRACT. *“Revolution of the Rule of Law”: Transitional Rule of Law in Post-Communist Romania.* The present study seeks to theorize upon transitional justice in post-communist Romania. The phrase “transitional justice” is essentially understood as the amount of practices resulting from the contextualizing of the mechanisms of justice to a certain historical and political environment. The

pressures of the political environment in post-totalitarian newly emerged democracies shape the rule of law in certain ways, differing from country to country. The political and historical environment is also being shaped by the decisions of the judiciary. In essence, transitional justice questions in a constructive manner all the judicial practices of a certain political environment, including the very normativity of the contingent political order. Romania's status in transitional justice is briefly discussed in the context of the larger Eastern European transition from totalitarianism to democracy. Although Romanian transitional justice can be included in the mainstream regional efforts to adjust to a new liberal rule of law, there are still some peculiarities which define Romania's particularly difficult advancement from Communism to liberal democracy.

Keywords: transitional justice, rhetoric of justice, rule of law state, post-communism, Romanian judiciary

L'ÉTAT DE DROIT EN MAL DE JUSTICE

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ABSTRACT. We propose hereafter an analysis of the way in which the postcommunism has determined the significance of justice and, in doing so, pretended to reorganize the possibility for a legitimate political community. Given that the public perception points out to a gap between the rule of law and justice, one should understand for what reasons. Does the rule of law have the resources for doing justice? Are the legal procedures enough? Or should we take into consideration the possibility that the rule of law is unable to do justice? Subsequently, we identify and discuss three radicalizations: the issue of normativity, the rogue state and the heterogeneity between law and justice. Ultimately, the possibility of justice depends on a different way of thinking democracy.

Keywords: rule of law, justice, rhetoric, post-communism, transition, democracy