

Summaries

Transitional Justice. Taking Account of the Past by Pier Paolo Portinaro

Transitional justice refers to the admission of wrongdoing, the recognition of its effects and the acceptance of responsibility for those effects. It provides an alternative to vengeance and a measure of accountability for the perpetrators and justice for the victims by establishing truth. The article considers the different ways of taking account of the past (from direct retaliation to amnesty, from prosecution of perpetrators responsible for large-scale state brutality to public discussion about human rights abuse and shaping of collective memory) and focuses the emergence of the paradigm of restorative justice. In amending tragic historical immoralities, restitution, reparation, apology, and reconciliation replace a universal comprehensive standard of criminal justice with a negotiated justice among opposing parties in specific cases.

Drawing on the discussion of some recent studies (Teitel, Elster, Barkan, Frei, Koenig) concerning the role of criminal trials, lustration policies and truth commissions in democratic transitions, the article attempts to outline even broader conclusions about a theory of transitional justice.

A Threefold Vergangenheitsbewältigung. *The Politics of the Past in Germany* by Marzia Ponso

The article discusses that specific aspect of German political culture known as *Vergangenheitsbewältigung*, i.e. the going over the totalitarian past through a threefold reworking: judicial (trials, convictions, political and administrative purges), economic (compensations and reparations) and cultural (a deep historical knowledge of what happened, the working out of moral and law criteria for judgment, an at least symbolic declaration of solidarity towards the victims). The German case is interesting because of its uniqueness.

First of all, from the judicial point of view, the way the past was reworked has had an extraordinary impact, being at the root of present developments in international criminal law. From the political and the moral-philosophical perspectives, no other population has so thoroughly re-defined its identity with respect to its past: constitutional and post-national patriotism are a case in point. One more exceptional aspect is that, after the reunification, Germany has lived through a new *Vergangenheitsbewältigung* which suggests interesting comparative considerations.

*Between historical memory and restorative justice:
The case of contemporary Spain*
by Jacopo Rosatelli

The article considers some political and legal questions related to the recovery of the historical memory of Republican combatants and the opponents of Franco's dictatorship. This is one of the most important social phenomena of recent years in Spain and it culminated in the so-called *Ley de memoria histórica* (December 2007), promoted by the socialists. This law represents a controversial change from a paradigm of oblivion, established during the peaceful Transition to Democracy, to a form of restorative justice through the memory of victims. It can also be interpreted as the first step towards developing a sort of anti-Francoist *civil religion*.

*The Papon Affair.
Crimes against humanity in Vichy France*
by Diego Guzzi

The trial of prominent functionary Maurice Papon, that played out in Bordeaux between October 1997 and April 1998, gave rise to a wide-ranging political, legal and historical debate that this article intends to examine. They were the first criminal proceedings where a French citizen was accused of complicity in crimes against humanity and were an occasion for public reflection on the guilt of the Vichy government. It was actually only in the Eighties and Nineties — after decades in which the phenomenon of collaborationism had been removed from official debate — that France started to investigate the responsibilities prefectures and the police had had in the deportation of the Jews. Through a re-examination of the events in the Papon affair, it is therefore possible to reconstruct the steps in a complex path along which the past was revised albeit with the reticence and silence of the Fourth and Fifth Republics often slowing down the procedure. At the same time, the process represents a stimulating starting point for us to meditate once again on the intricate question of the relationships existing between memory, history and law.

The Rational Constitutionalism of Emmanuel Sieyès
by Marco Goldoni

This paper deals with the growing number of recent publications devoted to Emmanuel Sieyès' political philosophy. By engaging with the new interpretations proposed in these works, this paper intends to shed a light on the deep unity one can detect between Sieyès' philosophical approach and his constitutional theory. It is argued, in particular, that Sieyès' constitutionalism is rooted in his philosophical rationalism. This means, first, that Sieyès' constitutional theory is not fully shaped by historical events. Second, the aim of constitutionalism is to build a lawmaking process which is able to take into account the people's needs and to secure human rights. In this respect, Sieyès' conception of constitutionalism implies a peculiar understanding of the principle of separation of powers, that is, one where different organs are cooperative, and not conflicting, parts in the lawmaking process.

*Torture today: Why not.
Reflections on Abu Ghraib and Guantanamo*
by Caterina Mazza

The empirical evidences and the contemporary discussions get into question the total inadmissibility of torture which has been arranged and fixed on December 10, 1984 by the *UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*. In fact, in the present time, several US scholars and politicians argue about the possibility to use torture as an adequate instrument to face the grave threat of international terrorism. Thinkers, for their convictions and analysis, part into two opposite positions: «utilitarian» and «absolutistic». The former is based on the Schmittian theory of emergency and on the idea that torture, a wrong practice in itself, can be justifiable if useful instrument to reach a morally higher «good» or to prevent an ethical worse «evil». The latter is grounded on the Kantian imperative as a guide for human choices. By this point of view, torture is absolutely and categorically unjustifiable, also in presence of a great threat for national security. Which reasoning and purposes support the US scholars in this reconsideration of torture as a tool of democracy? Which the actual consequences of these theoretical reflections?

The Revolution in Military Affairs: Why it Took Place and What it Means
by Davide Fiammenghi and Antonello Fiorucci

This paper reports an analysis of the Revolution in Military Affairs, a central topic of the strategic debate since the end of the Cold War. Three main points are discussed. The first one is the historical root of the Revolution. In particular, it is emphasized that the crisis of legitimacy of the US army after the Vietnam War has had a positive, triggering effect over the process of modernization. The second section is dedicated to the analysis of the central concepts and meanings associated with the Revolution: information warfare, global positioning systems, the «system of the systems» and so on. The third issue discussed is the future of the US grand strategy. Here the authors try to shed some light on the strategic dilemmas American decision makers shall deal with over the next few decades and conclude that the durability of the American primacy relies on four main factors: the state of the American economy, the timing of confrontation with its rivals, the spread of new technologies, and the development of the terrorist threat to American security.

Dignity as the Foundation for an Ethical-Juridical Inter-specific Discourse?
by Alberto Pirni

The essay is inspired by a recent book on Kant's philosophy of right. It deals firstly with the philosophical-juridical problem of punishment and the thematic of man's duties towards nature. A central space is dedicated to the thematic of human dignity, whose bio-ethical and bio-juridical declination offers a starting point for a more extended discourse on that concept. The author aims at articulating a broader meaning of the concept of dignity that, in accordance with Kant, can be developed into an inter-specific perspective and as such become a guiding principle of (our) relationships with animals and nature as a whole.