Trust and Transitional Justice

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There is a strong presumption that transitional justice measures support both political and social trust-building. Scholars and policymakers have suggested a direct positive relationship between transitional justice and trust-building and further linked such trust-building to meta-transition goals like democratization, development, and reconciliation. Despite the dominant narrative asserting that transitional justice promotes trust, some scholars and practitioners have cautioned that reckoning measures might have no significant impact on trust-building, or even could undermine societal trust. Impact assessments of the relationship between transitional justice and trust show divergent outcomes, with some types of trust supported, some types of trust undermined, and some types of trust unaffected by transitional justice measures. Thus, while certain types of transitional justice might directly support trust-building, the effects are more conditional, more differentiated, and possibly more time sensitive than originally assumed.

The trust and distrust debate

Three main narratives in the literature describe the relationship between transitional justice and trust: transitional justice measures could increase trust, undermine trust, or break distrust. First, the dominant narrative is that transitional justice measures build trust for a number of reasons. By addressing retroactive justice concerns, a new regime is demonstrating to its citizens a commitment to fairness and transparency. This might improve perceptions of the trustworthiness of new public institutions or the national government. Holding individuals criminally responsible for their actions, affiliations, or previous positions through trials or

tribunals could demonstrate that the new regime is both different from the previous regime and operating on rule of law principles, features also suggesting trustworthiness.

Non-criminal types of transitional justice, like personnel reforms, vetting, and lustration, force bureaucratic change by removing or preventing from taking office or positions of power those individuals whose previous regime involvement or complicity renders them untrustworthy. The institutions and the personnel manning them are changed, thereby demarcating an institutional break with the past. Personnel reform measures that screen individuals in public institutions seek to change citizens' assessments of the capabilities, credibility and integrity of the individuals in positions of public trust. Measures such as restitution, memorialization, and truth commissions also tap into a sense of moral cleansing, suggesting that the process of revealing the truth about the past fuels both political and social trust. Public disclosure programs, file access procedures, and lustration measures have truth-telling and transparency components as well. These measures could build trust through symbolic accountability, truth-telling as a form of acknowledgement and atonement, and as a moral gesture signaling transparency for the future.

The second main narrative is that transitional justice measures threaten to undermine trust in transitional societies. Retroactive justice might violate strict rule of law procedures, thereby undermining the trustworthiness of government. A new government's willingness to transgress rule of law concerns in order to pursue justice - for example, trying individuals for "crimes" committed in the past when those actions were not criminal – could signal that a government could not be trusted to follow the law in the future in other issue areas. Additionally, problems with the design or the implementation of transitional justice programs could undermine trust rather than enhance it. Transitional justice measures that are overtly manipulated by political parties for personal advantage or used as acts of revenge politics, documented in Hungary and

Albania, could undermine citizen trust in political parties, public institutions, and government. Lengthening the time period for transitional justice beyond the initial transition period could result in citizen fatigue with the measures and undermine their legitimacy and trust-building properties. Moreover, having international actors directly involved in truth commissions or tribunals, such as in Cambodia and Sierra Leone, might decrease the legitimacy of the measures and undermine citizen trust (see entries on Albania, Cambodia, Hungary, Sierra Leone).

Claus Offe (1992) provided many reasons why transitional justice measures might undermine trust in government and interpersonal trust. He suggested that transitional justice measures could provoke acts of revenge or sabotage by the individuals impacted by the measures. Transitional justice might create resentment and exacerbate low levels of interpersonal trust. Criminal sanctions could even create martyrs, thereby undermining the trust one is trying to create (Offe 1992, p. 198). As such, the assumption that trust-building will result from well intentioned transitional justice measures is problematic.

There is also a concern that rather than being benign, truth revelation programs could foment interpersonal distrust. For example, lustration focuses on access to information in secret police files, which documented how friends, colleagues, and even relatives might have betrayed you. Some have argued against lustration because of the potential for revelations about the scope of the interpersonal betrayals to undermine trust. Alternately, truth commissions with no penalty component could retraumatize victims, provoke feelings of unfairness, and undermine social trust.

Finally, a third narrative focuses on how transitional justice could break cycles of distrust. This narrative is much less developed than the trust-building or trust-undermining narratives and builds on literature focused on distrust. Overcoming cycles of institutional and

interpersonal distrust remains a problem in many post-authoritarian and post-conflict situations, and this problem might be best treated separately from trust-building efforts. For example, networks of secret police informers intentionally created generalized fear and distrust in communist countries. The East German Stasi practiced a policy of *Zersetzung* or decomposition, which meant an active disintegration or subversion of the lives of individuals who would not collaborate (see entry on Germany – the communist past). Communist regimes created distrust between citizens in order to ensure primary loyalty to the state. These pervasive networks of distrust are not easy to dislodge after the regime change. Similarly, in a post-civil war context, breaking patterns of distrust between ethnic groups, religious groups, or tribal affiliations might be required prior to engaging in trust-building exercises. From this perspective, transitional justice does not create trust but breaks pervasive distrust, and thereby opens a window of opportunity for other types of economic, political and social reforms to foster trust-building.

Trust-building: The State, Public Institutions, Civil Society, and Citizens

Not all trust is the same. Citizens' trust in government or political institutions is not assessed the same way or affected by the same things as the more personal trust individuals have for their friends, neighbors, and even fellow citizens—interpersonal trust—or the trust they feel for social institutions and organizations of which they are a member—civic trust. If trust is a belief or judgement about whether to make oneself vulnerable to others and or institutions, we can see that trust assessments would vary depending on the situation and the object of trust. With respect to transitional justice, we can therefore imagine that transitional justice measures might have differentiated effects on perceptions of political and social trust, and on individual or institutional trust. This section examines four different possible trust dynamics to explicate the possible divergent or conditional effects of transitional justice on political and social trust.

First, citizens' trust in government could be impacted by transitional justice measures. Trust in government captures a holistic assessment by citizens of the credibility, fairness, transparency, compliance and in some cases, effectiveness, of the government across social, political and economic issue areas. Governments can demonstrate and build their legitimacy through transitional justice measures, such as truth-telling procedures, reconciliation measures, retributive justice, and accountability mechanisms. Building trustworthy government through transitional justice might be an indirect process, as transitional justice measures might foster social capital which could in turn support effective and trustworthy government (Putnam 1993).

Many Eastern European governments explicitly linked lustration and public disclosure programs with a desire to support civil society and build trust in government. The process of truth-telling associated with the truth commissions in South Africa and Central America has also been framed as a way to build trust in government (see entries on the Czech Republic; Slovakia; South Africa; Truth and Reconciliation Commission of South Africa). Additionally, criminal prosecutions or trials, such as domestic trials used in Argentina and Cambodia, are examples of the government holding individuals accountable in the past as a way of signaling that the new or reformed government is trustworthy in the future.

Second, transitional justice might affect citizens' perceptions of political institutions, including but not limited to the parliament, the army, the judiciary, the police, and the civil service, as well as supporting public institutions like the media, universities, and the national banking system. In post-conflict and post-authoritarian societies, victims of the previous regime might be unwilling to trust public institutions that continue to employ individuals associated with the former regime or perpetrators of previous abuses. If citizens do not see a change in personnel in public institutions or new standards and procedures for those institutions, they are unlikely to

engage in the risk-taking required for trusting behaviors. A failure to use public institutions would stymie political and economic exchanges, and thwart democratization. Vetting or lustration specifically target public institutions, screening individuals in those positions for their integrity or competency. Targeted measures, such as security sector reforms in Bosnia to screen the police and the judiciary, might change perceptions of those institutions.

Several international organizations have supported this public institution trust-building interpretation of transitional justice. In 1996, the Parliamentary Assembly of the Council of Europe passed Resolution 1096, supporting the right of states to enact lustration laws as forms of transitional justice. The Council of Europe explicitly stressed the use of vetting as a way to reassure citizens that they could trust their political officials and public institutions and as a method to promote decommunization. The United Nations High Commission on Human Rights in its vetting handbook for post-conflict states stressed that the primary goal of vetting was the re-establishment of civic trust and the promotion of legitimate public institutions (2006, p.4). Well-executed vetting programs are viewed as a means to promote trust and institutional legitimacy.

The relationship between vetting and trust-building remains contentious, with some arguing that vetting could undermine trust in public institutions through their improper use, politicization, due process violations, employment discrimination components, and potential violations of an individual's right to privacy, to association, or to free speech. National courts, including the Czech, Slovak, Polish and Romanian Constitutional Courts, the European Court of Human Rights (ECtHR, see separate entry), and the International Labor Organization have heard complaints about potential rights' violations arising from the structure and/or implementation of lustration laws. The ECtHR, in particular, has heard cases in which citizens argued that lustration

measures violated due process guarantees and were unfair forms of employment discrimination. The ECtHR has consistently ruled that there was nothing inherently discriminatory about the use of vetting to safeguard the stability and integrity of a state's public sector, even describing measures as appropriate means for a democracy to protect itself, while simultaneously cautioning against abuse or discrimination in the implementation of these laws.

Truth-telling has also been framed as a way of building trust in public institutions and quasi-public institutions. For example, in Poland (see separate entry), only individuals who were found to lie on their lustration certificates were removed from office. This way, the laws were more truth-telling exercises than direct employment vetting procedures. More generally, the truth-telling component of transitional justice empowers citizens by giving them a voice in the process, and formally records and therefore validates their experiences. This empowerment facilitates their ability to take risks and individually assess the trustworthiness of public institutions. Public opinion polls in Eastern Europe have shown that people did in fact think that lustration policies could improve the trustworthiness of political candidates and related public institutions.

Third, trust in civil society and interpersonal trust can be directly and indirectly affected by transitional justice. Interpersonal trust captures the generalized propensity to trust others in a society, while civil society refers to the voluntary civic and social organizations that collectively contribute to the effective functioning of a good society, including unions, religious institutions, and community cultural centers. It is well documented that interpersonal trust levels are low in many post-conflict and post-authoritarian regimes. Transitional justice measures, such as truth commissions, restitution, reintegration, rehabilitation, and lustration, might promote interpersonal trust and civic trust through restorative justice processes focused on accountability,

transparency and atonement. In post-conflict Rwanda, gacaca courts were a form of restorative justice focused on confessions, reconciliation and reintegration of the individual at the community level (see entries on Gacaca courts, Rwanda). In Eastern Europe, facilitating file access, public disclosures and truth-telling exercises were all framed as a means to promote interpersonal trust in the post-authoritarian transition. These are consistent with the democratization literature, which stresses a need for interpersonal trust to build civil society and contribute to a strong democracy.

Impact Assessments on Trust

There is a significant amount of scholarship on the theoretical linkages between transitional justice and trust, but there are fewer empirical studies demonstrating that relationship. Measurement problems, information limitations, and strong presumptions about causality have affected impact assessments of transitional justice. Normatively and empirically there is a lot at stake—what if transitional justice did not build trust, or had no impact on trust, or worse?

There are several reasons why less attention has been paid to demonstrating a causal relationship between transitional justice and trust. First, it is difficult to measure transitional justice. It is not simply the presence or absence of transitional justice measures, but the timing, the scope, intensity, and effectiveness of a transitional justice program that might affect trust-building and other transition goals. Transitional justice measures might be passed *de jure* but remain unimplemented *de facto*, making measurement even more tricky. Quantifying these qualitative differences to allow cross-national analyses has proven challenging for the field of transitional justice. Even assuming accurate transitional justice and trust measures, demonstrating a relationship between them is still problematic. Transitional justice measures

interact with economic performance, corruption, and government effectiveness, all affecting citizens' perceptions of trust. Therefore these types of economic and political factors must be controlled for, if we are to understand the conditions under which transitional justice affects trust.

Despite the measurement challenges, several recent studies showed relationships between transitional justice measures and trust. Roman David (2011) found personnel reform programs supported trust in government in Poland, Hungary and the Czech Republic. Manuel Cardenas, Dario Paez, Bernard Rime and Maitane Arnoso (2015) found that official truth and reconciliation policies and official apologies in Chile supported social trust-building. Cynthia Horne's (2017) work on trust and transitional justice examined the effects of lustration, file access, and public disclosures on various types of trust in the post-communist region. She found that lustration and public disclosures improved citizens' perceptions of the trustworthiness of public oversight institutions, such as the judiciary, the police, the army, the press, and the civil service. However, trust effects were conditional on the institutions. Elected institutions, like parliament and political parties, showed few trust effects from lustration, and trust in them could be undermined by politicized vetting programs. Horne also showed that trust in government appeared less directly affected by lustration, but there were noted positive indirect effects on trust in government.

The relationship between personnel reforms and social trust was more complex than that seen with political trust. Part of lustration programs involved revealing the background of individuals in positions of trust in social institutions like churches, unions, and clubs. Revelations that high-ranking clergy members or well-respected union advocates were secret police informers have negatively affected trust in post-communist social institutions. However, contrary to fears that file revelations would catalyze interpersonal distrust, there were limited effects on

interpersonal trust in the post-communist states. Findings suggested that vetting and lustration might support political trust but might not always yield positive social trust outcomes, encouraging researchers to attend to possible divergent effects of transitional justice.

Horne (2017) examined how the severity and scope of vetting measures affected different types of trust-building. She demonstrated that more punitive and compulsory measures registered larger trust effects than more voluntary and less punitive measures. This line of research reaffirmed a positive relationship between lustration and political trust-building, while highlighting that more expansive and more punitive measures might yield more political trust-building. Thus, more attention might need to be paid to the differentiated effects of non-punitive and punitive transitional justice measures on trust-building; in other words, not all forms of transitional justice are equally beneficial.

There is also new work developing on the conditional effects of the timing of measures. Horne demonstrated that early lustration measures promoted trust in elected institutions and trust in government, but later measures were associated with negative trust effects. Horne (2017) also demonstrated that over time the efficacy of measures declined, with reduced trust-building effects. However, some types of trust, such as trust in the judiciary or trust in the police, were bolstered even by transitional justice measures enacted very late in the transition. This research suggests that whether and how the timing of transitional justice affects outcomes might be conditional on both the type of transitional justice measure used and the goal of that measure, such as promoting democracy, good governance, or trust. Continued research addressing how the timing of other types of transitional justice, such as trials, truth commissions, and reparations, might condition trust-building and other transition goals would fill in gaps in our current knowledge of timing and transitional justice considerations.

Contrary evidence also exists regarding the relationship between trials and truth commissions and trust. Susanne Karstedt's (1998) comparison of the Nuremberg trials and post-communist lustration in East Germany suggested possible negative trust effects. She looked at trust levels during transitional justice. In both time periods in East and West Germany she observed that levels of trust were low and declining during transitional justice (Karstedt 1998, p.47). Horne (2017) examined whether truth commissions were associated with more trust in public institutions, trust in government, and social trust, as asserted in the transitional justice literature. She did not find a positive relationship between truth commissions and trust in the post-communist space, and there was preliminary evidence of a negative relationship. These contrary findings illustrate why more work on the relationship between transitional justice and trust-building should be a priority in the field. Focusing on trust-building as a dependent variable or as an intervening variable would further our understanding of how transitional justice impacts trust and trustworthy governance, and then by extension the process of democratization.

Conclusion

Post-conflict and post-authoritarian transitions literature highlights the importance of trust-building in order to support democratic governance. There is a strong presumption that well-designed and implemented transitional justice measures foster trust, which in turn supports democratization. This assumption has operated as a first order building block for discussions about transitions, and has remained largely unproblematized, despite some debate in the literature about the trust-enhancing or undermining properties of transitional justice. Transitional justice measures have been aimed at building trust in national governments, public institutions, civil society, and interpersonal trust. All of these objects of trust are also theorized to support the process of democratic consolidation. While the vital role for trust has been well documented in

the literature, tracing the relationship between transitional justice and trust-building remains an area for continued research.

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Cross references: Albania; Cambodia; Czech Republic; Democratization and transitional justice; Due process issues; European Court of Human Rights; Forgiveness (legitimacy of); Gacaca courts; Germany – the communist past; Hungary; Lustration; Poland; Prosecute and punish; Purges; Rwanda; Sierra Leone; Slovakia; South Africa; Truth; Truth commissions; Truth and Reconciliation Commission of South Africa; Truth and transitional justice; Victim theories/trauma, healing, and transitional justice.

Further Readings:

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