

Final Edited Version

Cynthia M. Horne, “Trust and Transitional Justice,”

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A relationship between transitional justice measures and trust has been both theorized and asserted in the literature on post-conflict and post-authoritarian transitions. The dominant assumption is that there is a direct positive relationship between transitional justice and trust building. The object of trust-building is varied across the literature, with emphasis being alternately placed on building trust in government, public institutions, civil society, and interpersonal **relations**. While there is a strong presumption regarding the trust-building properties of transitional justice measures, this relationship is theoretically and empirically contentious. Alternative theories have argued that transitional justice measures have no significant impact on trust-building, or even that they could undermine trust. Because trust has been widely linked to the development of an effective civil society and good governance, understanding the relationship between transitional justice and trust-building is vital to an understanding of the process of democratization.

Defining trust

While there are multiple definitions and uses of political and social trust in the social sciences, a minimal consensus has developed on certain key features. Starting from Margaret Levi and Susan Stoker’s review of political trust and trustworthiness in political science, trust “involves an individual making herself vulnerable to another individual, group, or institution that has the capacity to do her harm or to betray her” (2000, p. 476). Trust is relational and rational,

meaning individuals assess the interests and capabilities of others in determining whether to engage in a social, political or economic exchange. There is always an element of risk, the possibility that the other might not act in your interest, which is why trust is required. Trust is a judgment, a cognitive assessment of the other (2000, p. 476). The other could be an individual, a social institution, a public institution, or even a national government. If the other has an interest in and the capabilities to act in the interests of the truster, she is considered trustworthy. This definition of trust can be used to explore both the relationship between trust and transitional justice, as well as the various objects of trust-building in transitional societies.

The trust and distrust debate

There are three main narratives in the literature that 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. There are both institutional and symbolic components to the trust-building mechanisms, which can function separately or together. The bureaucratic or institutional change component of transitional justice focuses on removing or preventing from taking office or positions of power those individuals whose previous regime involvement or complicity renders them untrustworthy. The institutions are changed and the personnel manning the institutions are changed, thereby demarcating an institutional break with the past. Institutional change is also designed to change citizens' assessments of the capabilities, credibility and integrity of the individuals in positions of public trust.

In conjunction with institutional change, there is a symbolic or, alternatively characterized, moral component to trust-building. Transitional justice measures have been described as vehicles of moral cleansing. Vetting, restitution, punishing, or prosecuting are all

means to facilitate a type of moral cleansing of society from past crimes and injustices. Additionally, less punitive measures such as the truth commissions have also been equated with justice. This suggests that the process of revealing the truth about the past functions as a mechanism to build trust in government and public institutions. Moreover, a new regime that addresses retroactive justice concerns is demonstrating to its citizens a commitment to fairness and transparency, which might improve perceptions about the trustworthiness of new public institutions or the national government in other issues areas as well.

The second main narrative is that transitional justice measures threaten to undermine trust in transitional societies. Retroactive justice measures might undermine strict rule of law procedures, thereby undermining the trustworthiness of government. If a new government is willing 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, this could signal that a government could not be trusted to follow the law in the future in other issue areas. There is a substantial literature describing the various rule of law and justice tradeoffs that governments face. Given the possible compromises required in meeting truth, justice, and rule of law concerns, this narrative has cautioned about the possible ways that transitional justice measures might inadvertently undermine trust by violating individual rights, due process, or rule of law principles.

Additionally, problems with the design or the implementation of the transitional justice program 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 both 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 has the possibility to 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 truth revelation programs could foment interpersonal distrust. For example, lustration procedures focus on access to information in secret police files. Secret police files contain information documenting how friends, colleagues, and even relatives might have betrayed you. One of the reasons why some have argued against lustration is the potential for revelations about the scope of the interpersonal betrayals to undermine 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 rather than trust. Distrust and trust are not opposites. While they are related, Russell Hardin (2004) explains the cognitive properties and the strategic calculations which differentiate the highly generalized nature of distrust from trust, as well as the greater difficulty overcoming distrust compared with building trust.. Distrust can

diffuse in a way that trust cannot because it is generalized rather than particularized in nature. As such, overcoming cycles of institutional and interpersonal distrust remains a problem in many post-authoritarian and post-conflict situations that has been 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). One of the strategies in communist regimes was to create distrust between citizens in order to ensure primary loyalty to the state. These pervasive networks of distrust are not easy to dislodge even with a change in regime. 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 necessarily create trust so much as it breaks pervasive distrust, and thereby creates a window of opportunity for subsequent trust-building.

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

A second order question in the literature concentrates on specifying the object of trust-building. There are four possible objects of trust-building highlighted in the transitional justice literature: trust in government, trust in public institutions, trust in civil society, and interpersonal trust. While they are not discrete or exclusive categories, each is theoretically distinct and there are different theorized causal mechanisms for each.

First, citizen trust in government could be impacted by transitional justice measures. Trust in government is a multi-variable composite, capturing 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. The broad nature of trust in government makes it especially difficult to prove a causal relationship with transitional justice. Discussions of trust-building and government tend to focus on improvements in government legitimacy. Governments can work to demonstrate and build their legitimacy through transitional justice measures, such as truth-telling procedures, reconciliation measures, retributive justice, and accountability mechanisms. As Robert Putnam's work has emphasized, building trustworthy government through transitional justice is an indirect process, focused on the social capital creating nature of trust (1993).

Many Eastern European governments have explicitly linked transitional justice measures with a desire to build trust in government. Content analysis of the transitional justice debate in the Czechoslovak Federal Assembly (17th sess. 1991) demonstrated that trust-building was one of the top goals of their transitional justice (illustration) program (Boed 1999). 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).

Second, trust in public institutions focuses on the trust citizens feel toward the main public institutions of governance, including but not limited to the parliament, the judiciary, the police, and the civil service, as well as the media and the national banking system. Many transitional justice measures specifically target public institutions for vetting. As such, public institutions are distinguished from national governments as the objects of trust-building.

In post-conflict societies, victims of the previous regime might be unwilling to trust public institutions that continue to employ former perpetrators of regime atrocities. This is the

case with public institutions with which citizens have direct contact, such as the police and the judiciary. If citizens do not see a change in personnel in public institutions or enforced new standards for 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.

Several international institutions have supported this public institution trust-building interpretation of employment vetting. In 1996, the Parliamentary Assembly of the Council of Europe passed Resolution 1096 which supported 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. International organizations have also highlighted the importance of vetting to support trust-building in post-conflict societies. 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. If due process is violated through the improper implementation of employment laws, or if vetting violated individual rights, public institutions could be made less trustworthy. In response to these criticisms, both the International Labor Organization and the European Court of Human Rights have rendered judgments. In several cases, the European Court has ruled that it was legal to use employment exclusion criteria, such as lustration policies, to guarantee the morality or integrity of persons in positions demanding public trust. The International Labor Organization's *General Survey* (1996)

also safeguards the right of states to engage in employment vetting, particularly in positions requiring public trust. Both international organizations have ruled that there is nothing inherently discriminatory about the use of vetting to safeguard the stability and integrity of a state's public sector, 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 the case of Poland (see separate entry), only individuals who are found to lie on their lustration certificates are removed from office. In this way, the laws are more truth-telling exercises than direct employment vetting procedures. It has also been argued that the truth-telling component of transitional justice is empowering to citizens because it gives 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 prove the trustworthiness of political candidates.

Third, trust in civil society and interpersonal trust can be directly and indirectly impacted by transitional justice measures. Interpersonal trust and civil society trust are related, but are treated separately in much of the literature. Interpersonal trust captures the generalized propensity to trust others in a society, and could be focused on specific issue areas but need not be. 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. Without interpersonal trust, citizens are less likely to engage in

voluntary organizations together. Mutual trust or a willingness to extend trust is seen as vital for the construction and maintenance of social organizations. .

It is well documented that interpersonal trust levels are low in many post-conflict and post-authoritarian regimes. Transitional justice measures have been enacted with a goal of promoting interpersonal trust and civic trust. In the case of post-conflict Rwanda, gacaca courts are 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, truth-telling exercises, lustration, as well as property restitution measures, are all transitional justice measures that have been framed as a means to promote interpersonal trust in the post-authoritarian transition. As Putnam (1993) stressed in his writing on civil society and democracy, there is a need for interpersonal trust to build civil society and positively contribute to a strong democracy.

Impact Assessment on Trust

There is a substantial literature on the lack of trust in countries in transition, be it institutional or interpersonal, and its impact on democracy. There is also a substantial literature on the relationship between transitional justice measures and democracy. However, there are fewer actual impact assessments of the effects of transitional justice on trust. The focus of much of the writing on trust and transitional justice tends to be on how to choose the appropriate transitional justice measure in order to foster trust, with less attention paid to establishing an empirically verifiable relationship between the two.

Scant attention has been paid to the type of trust being fostered, with a blurring of discussions of trust in government, trust in civil society, trust in public institutions, and interpersonal trust. In some cases an assumed relationship between institutional trust and

interpersonal trust has been asserted, despite the scholarship, such as Susan Rose-Ackerman's (2001) and Eric Uslaner's (2008) work on post-communist transitions, showing they are not necessarily correlated in post-authoritarian transitions.. Measurement problems, information problems, and strong assumptions about causality have affected impact assessments of transitional justice measures on trust-building.

There are several reasons why less attention has been paid to demonstrating the causal impact of transitional justice measures on trust. First, trust is difficult to measure accurately. Most measures of trust come from surveys of attitudes and opinions about the trustworthiness of government, public institutions, and fellow citizens, such as Eurobarometer or the World Values Survey. Survey or polling data reflect public attitudes regarding trust, but they do not necessarily capture if citizens will engage in transactions that require trust. Citizens may use public institutions and engage in transitions even if they assert a lack of trust. Therefore, measuring both the attitudinal and behavioral components of trust is necessary but challenging.

Second, it is difficult to scale transitional justice measures both within a country and across countries. Because there measures might be passed *de jure* but remain not implemented *de facto*, demonstrating that a country has enacted legislation for implementing transitional justice is only the first step in ascertaining the scope, intensity, and effectiveness of a transitional justice program. National level data are difficult to obtain and highly subjective, and therefore resistant to cross national comparisons. Measuring or scaling the actual implementation of transitional justice programs across countries is challenging, since what might be considered adequate implementation in one country could be viewed as insufficient in another. Moreover, assessing the relative weights of different types of transitional justice programs could be misleading.

Third, even assuming accurate transitional justice and trust measures, demonstrating a relationship between them is still problematic. Because trust measures are also impacted by assessments of the larger political, social and economic environment, controlling for the effects of these interactive variables on trust is difficult. For example, transitional justice measures interact with economic performance, perceptions of corruption, and the effectiveness of government in their impact on perceptions of trust. Disentangling the impact of transitional justice measures from other economic, political and social variables poses measurement challenges.

There are many single case studies or paired country comparisons in which trust-building is asserted as part of the narrative showing the relationship between transitional justice methods and the success or failure of democratization. In these cases, trust is treated as a largely unexplored intervening variable, with transitional justice measures being the independent variable and democracy being the dependent variable. There are fewer studies treating trust as a dependent variable, or explaining how different types of transitional justice affected a change in trust levels. Since trust-building in government, public institutions, and civil society are considered components of democratization, the lack of attention paid to trust or trust-building as empirically and theoretically separate from democratization is a lacunae in the literature.

One example that stands out of an analysis of trust-building as a dependent variable is Susanne Karstedt's comparison of the Nuremberg trials and post-communist lustration in East Germany. Karstedt specifically looked at trust levels during the process of transitional justice. In both time periods in East and West Germany she observed that levels of trust were low and declining during transitional justice (1998, p.47). Given that her findings do not support the assumed relationship between transitional justice measures and trust-building, this study is

illustrative of why more work on trust-building as a part of but separate from the literature on democratization is necessary. Focusing on trust-building as a dependent variable or as an individually treated 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 linked to 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, however, 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; 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.

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