

Transitional Justice and Development

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Abstract

Although transitional justice and development measures are frequently deployed in the same contexts, efforts to establish direct links between transitional justice and development are still nascent. Recent political events such as the “Arab spring” movements, along with trends in thinking about development, suggest that programs within the two fields will be better integrated in the future. This chapter is intended to clarify why such integration is desirable, and argues that development programs instituted in contexts where massive human rights violations have taken place should confront the legacies of such abuses. Justice is an inherent part of development, and also contributes instrumentally to the conditions that development requires. In particular, transitional justice may help societies overcome weakened agency and the depletion of civic trust by fostering recognition and promoting trust, effects that appeal to two main social mechanisms: norm-affirmation and the articulation and disarticulation of groups both formal and informal within society.

Keywords: transitional justice, rule of law, civic trust, social capital, human rights, development

Introduction

At the highest level of generality, “transitional justice” refers to measures that are implemented in order to redress the legacies of massive serious crimes under international law.¹ These include prosecutions of those responsible, truth-telling exercises, reparations to victims, and institutional reforms to guard against recurrence of abuses. Given that this chapter makes part of a collection whose audience will consist of readers interested in development, it aims to show why development actors should be concerned about the legacy of human rights violations, and how transitional justice measures support positive development outcomes.

Efforts to establish direct links between transitional justice and development are just beginning to take shape, a delayed response which is surprising given that the two fields have been regularly deployed in the same contexts for more than two decades (see de Greiff and Duthie 2009; Mani 2008). This disconnect has only become more obvious with the trend to implement transitional justice measures in post-conflict and fragile settings which are the objects of intense activity on the part of development agencies (and which along with suffering severe deprivation and other developmental shortfalls suffer also acute justice deficits). The “Arab spring,” in which claims for economic opportunity, political freedoms, and justice have been raised on a par,

also provides a motivation to think about the connections between transitional justice and development.

Trends in thinking about development likewise invite reflection about the relationship between the field and transitional justice, as I will illustrate. Ever since development ceased to be thought of merely in terms of economic growth and started incorporating concerns about institutions, governance, the rule of law, and, in fact, history (see Harris, this volume), space has been created – although not occupied – to consider the contribution that redressing past human rights abuses might make to development (for an interesting set of reflections about the role of the past in economics, though not focusing on human rights abuses, see Bayly et al 2011).

The World Bank's *World Development Report 2011: Conflict, Security, and Development* has the potential to break the virtually absolute isolation between the two fields, to the advantage of both. This is the first major document from the World Bank—an institution that on the one hand is not well known for its interests on human rights, but that on the other, has significant impact in setting the international cooperation agenda—that makes reference to transitional justice and that places human rights violations at the heart of its analysis of conflict.² If the recommendations in

the Report are followed up, one can expect that transitional justice and development programs will be better integrated in the future.

This chapter is intended to clarify why such integration is desirable. The fundamental idea is quite simple; there is no such thing as a radical new beginning. After periods of mass abuse, political and institutional space will not only have to be shared with those who suffered the brunt of the abuses, but the institutions would have shown themselves severely insufficient to guarantee even the most basic rights and interests. Development programs instituted in contexts in which massive human rights violations have taken place need to confront the legacies of such abuses, for some of the crucial institutions on which development relies will need not just to regain the trust of victims, but to demonstrate that they are reliable, generally trustworthy sources for the resolution of social conflicts. Leaving aside for the moment binding legal obligations³ or perfectly defensible arguments that would show that addressing mass abuses is important in its own right, I will argue that dealing with the past is important for development purposes, both from the perspective of human development, and also because unredressed massive human rights violations undermine dispositions, norms, and institutions that are fundamentally important for future development. Perhaps the argument gains some plausibility for this audience if from the outset we keep in mind that transitional justice, to the extent that it represents an effort to

reconstitute the force of basic norms, is neither concerned with victims or with the past *alone*: recognizing moral and legal obligations to address abuses of the past also has profound effects on current and future societal development and rule of law.

This chapter begins with a sketch of the notion of transitional justice and an account of some of the milestones in its emergence as a field. This is followed by a discussion of the impact on development of a failure to address the legacies of the past, concentrating on the effects of massive human rights violations on the weakening of agency and the depletion of civic trust or social capital. The next section addresses the question of how transitional justice can contribute to overcoming those effects by fostering recognition and trust, and beyond pointing at plausible causal pathways mentions a social mechanism through which transitional justice can operate, namely, its capacity to articulate and disarticulate social networks. The chapter concludes with a focus on the contribution transitional justice can make to the rule of law, a notion that has played an important role in recent development thinking, especially but not exclusively new institutionalism, and points out the second, and fundamental social mechanism underlying transitional justice, namely, norm-affirmation.

Concept of Transitional Justice

Obviously, this is not the place to attempt a full history of transitional justice. As is usually the case concerning the history of fields of practice, there is no agreement on the ‘genealogy’ of transitional justice (for contrasting views, see Elster 2004; Teitel 2003; and Arthur 2009). The term itself is of recent vintage, dating from the early 1990s, although the measures that form its core have a long history; criminal justice is of course as old as legal systems, and so is reparations (despite the differences between inter-state post war reparations and the more administrative ‘reparations programs’ which have become common in transitional contexts); truth-telling has long been a goal of judicial procedures but also of commissions of inquiry common in parliamentary systems. And the history of vetting as well as other forms of what we now call security sector reform (SSR) includes old practices such as the not so praiseworthy purges following the Second World War.⁴

I will limit myself to mentioning some ‘milestones’ in the development of the field. Regardless of how deeply into the past the origins of transitional justice are traced by different authors, most agree that the Nuremberg trials were a seminal event, taken together with the various and in many ways continuing German efforts to “deal with the past,” including reparations (Colonomos

and Armstrong 2006; Authers 2006), denazification (FitzGibbon 1969), and memorialization initiatives (see Knowlton and Cates 1993).

The post-World War II accountability exercises were followed by a lull in criminal accountability that lasted for around four decades. After the war was over, there was a sort of pendular swing in favor not just of de facto impunity but also amnesties, including those in Spain, Brazil, and Uruguay, and the “due obedience” and “final stop” decrees in Argentina (not all of these amnesties were of a kind: see Weschler 1990 on Brazil and Uruguay; Nino 1996 on Argentina; Aguilar [forthcoming] on Spain; and Freeman 2009 for a general account of amnesties). The policy of trials and punishment seemed to be replaced by one of “pardon and oblivion.” At the international level, this sort of swing from prosecutions to impunity has often been explained by the Cold War.⁵ Closer to the ground, it was not irrelevant that the transitions in the countries mentioned in what Samuel Huntington (1991) called “the third wave” of democratization and in some of the transitions that followed it differed crucially from the German “transition” in having been “negotiated,” and consequently, transitions in which members of predecessor regimes retained significant power, sufficient to derail the transitional process if their interests were threatened.⁶

The fact that prosecutions were not carried out, however, did not mean that accountability efforts stopped altogether. They rather took a different form: in the countries of the Latin American Southern Cone, civil society organizations (some church affiliated or supported such as those in Chile and Brazil, some not, such as those in Argentina) never ceased the effort to collect evidence of abuses. This information would eventually become crucial for the operation of truth commissions, the formation of which constitute another critical milestone in the development of transitional justice.⁷ Thus, truth commissions were formed in Argentina (1983), Chile (1990), El Salvador (1992), South Africa (1995), Guatemala (1997), and since then in more than twenty five countries (Hayner 2011: xi–xii; lists forty truth commissions established from 1974–2009).

This process of the consolidation of the field around a core of measures was greatly enhanced by the publication of the first three volumes of *Transitional Justice*, under the editorship of Neil Kritz (1995). Like the appearance of encyclopedias, which have an integrating effect on the disciplines that spawn them, these volumes were both a manifestation of, and a contribution to, the coalescence of a field of knowledge and expertise.⁸ The exercise helped to lay out the principal elements of transitional justice measures, comprising criminal prosecutions, truth-telling, reparations, and institutional reforms, including vetting. As noted above, each of these has antecedents in practice. Criminal prosecutions stretch from Nuremberg through the domestic

processes undertaken in Chile, Argentina, and other Latin American countries, to the special courts established for Rwanda, Sierra Leone, and the former Yugoslavia, to the establishment of the ICC, and the subsequent debate on complementarity between international and national justice processes. Truth telling has a long history in public inquiries, but developed a greater depth of practice with exchanges on comparable experiences of truth commissions, from Latin America to South Africa to Morocco. Reparations developed well beyond its original inter-state origins to incorporate administrative reparations from states to victims, both individually and at the community level. Vetting and institutional reforms to ensure civilian oversight of security forces, constitutional guarantees and accountability measures gathered force with the combination of experience from Latin America and the Central and Eastern European countries.

Kritz's collection is only one of many expressions of the accelerated pace in the transmission of knowledge characteristic of a globalized world which helped in the consolidation of the field. Other such manifestations included the various meetings in which expertise gathered in countries where transitional justice measures were first implemented was shared with countries that were grappling with these issues years later (Arthur 2009: 349); the gradual availability of international cooperation funding for work in this area; the formation of a specialized NGO; the increase in the number of courses and fellowships in academic centers in the North and the

consequent global circulation of “experts.” In short, the elements of a transnational network for the diffusion of expertise and the exercise of advocacy developed quite rapidly around transitional justice issues, and this network was an important factor in the consolidation of the field (see Keck and Sikkink 1998 on the general phenomenon of globalized networks around human rights issues).

The consensus that developed over time about the minimum core elements of a transitional justice policy is reflected, for example, in the UN Secretary General’s Report (2004), “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies.” This report defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (4). The report enumerates the main components of a transitional justice policy mentioning explicitly criminal justice, truth-telling, reparations, and vetting, and, furthermore, stipulates that, far from being isolated pieces, these “mechanisms” should be thought of as parts of a whole: “[w]here transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof” (9). Just recently, the Human Rights Council adopted a

resolution creating a Special Rapporteur for the promotion of Truth, Justice, Reparations, and Guarantees of Non-Recurrence which incorporates this understanding of the elements of the field.⁹

Impact on Development

Having established what transitional justice is, the main question this section is why “dealing with the past” in terms of the legacy of human rights abuses is relevant to current and future development. While I have dealt with the conceptual linkages between transitional justice and development in a more systematic fashion elsewhere (de Greiff 2009, 2011, and 2012), here I will make *use* of this work and concentrate on some considerations that might be more salient to development promoters. Specifically, I will argue first that systematic human rights violations undermine human capacities, and that therefore redressing those violations is a development goal in its own right. Second, that systematic rights violations undermine agency and social capital or civic trust, and that this also makes redressing and preventing these violations important from a developmental perspective.

1. Systematic human rights violations undermine human capacities. Redressing them is a development goal in its own right. The “phenomenology of victimhood” is dense and complex, but it overwhelmingly gravitates toward the conclusion that the pain and suffering endured through the killing of family members, torture, or disappearances is not only an outrage to rights, but also a direct detraction from development in any common-sense understanding of the term. Atrocities and their legacies clearly undermine most of the basic capabilities in Sen and Nussbaum’s version of “human development”—that is, most of those capacities that make a life human (Sen 1999; Nussbaum 2002). These include longevity (life), bodily health, and bodily integrity, all of which are diminished in obvious ways by systematic abuses; the exercise of emotions (“not having one’s emotional development blighted by fear and anxiety”, Nussbaum 2002: 129); the ability to use practical reason (stunted by atrocities to the extent that their legacies lead to, among other things, great distortions in one’s sense of control over one’s own life plans); the capacity to engage in forms of affiliation that are free from humiliation and that exemplify respect, including equal worth; the ability to play (in the sense of being able to laugh and enjoy recreational activities); and the ability to have basic control over one’s political and material environment—all of which are diminished or undermined in the wake of abuses.

Measures of development that do not take this into account risk missing obvious aspects of individual and societal welfare which are crucial to the experience of the people concerned, despite possible economic growth: in Tunisia before the 2011 revolution, for example, macroeconomic and social measures of development all showed strong progress, but grievances over abuses by the security forces and lack of opportunities for political participation (aside from dissatisfaction with micro economic opportunities and with governance issues) played a large role in spurring the protests which eventually overturned the regime, and were clearly viewed by much of the population as a key measure of dissatisfaction with their welfare.

2. Systematic human rights violations undermine agency and social capital. Restoring them is important for development. Serious human rights violations shatter normative expectations fundamental to our sense of agency in the world. The expectations that get broken whenever human rights are violated are not just whimsical ones; they are based on general norms – that is, they are expectations whose satisfaction we reasonably feel *entitled* to. They are expectations about, for example, what constitutes legitimate treatment of others and at the hands of others, about situations in which it is “normal” to expect the assistance of others, about the state being the guarantor, rather than the violator, of fundamental rights, and so on. The very basic, fundamental nature of these expectations explains the pervasive fear that their defeat generates:

victims experience a deep sense of normative disorientation (How could *this* have happened? If this happened, then *anything* can happen), of solitude (How could *anyone* do this to me, and, crucially, how come *no one* prevented it?), and of resentment (This should have *never* happened, I was entitled to better treatment). (See de Greiff 2009, and references therein). In contexts of massive human rights abuses, non-victims often have the sense that after what happened to the victims, *no one* can be safe, no one can really know what to expect. The end result is a generalized weakening of agency, trust and social capital, not only for victims but for society as a whole.

These effects can be parsed out in more detail. Massive human rights abuses can be said to weaken agency in at least two ways. First, through a version of “adaptive preferences.” Poverty, for instance, is taken by the World Bank in its *World Development Report 2006: Equity and Development* to be a developmental blockage at least in part because it leads to diminished expectations (World Bank 2006: chap. 2, esp. 48ff). Arjun Appadurai (2004: 68) frames the argument in terms of how deep poverty stunts “the capacity to aspire.” The mechanism is arguably the same in both cases. Both poverty and victimization weaken the capacity to aspire and diminish people’s expectations. This may obviously impact very basic developmental

dynamics, such as the willingness of people to have their children travel to attend school or health clinics, the functioning of markets and trade, and investment in small enterprises.

Aside from the effects of massive human rights violations on individuals, there is another way in which this type of violations can be said to diminish agency. Systematic violations have effects not only on individuals' capacity to aspire, but also on their willingness to coordinate action with one another. It is not uncommon for the populations of areas which have known massive abuses to lead substantially more reclusive lives than they led before the violations, to withdraw from public spaces, to disengage from social networks. Take, as an illustration, a description of the effects of the years of terror in Argentina: "people avoided sensitive issues unless they were certain of the loyalty of the audience. Careless disclosures were as dangerous as deliberate reports. Vast portions of society sequestered themselves in their own family circle, restricting non-kin relationships to old friends. This tactic proved to be extremely isolating. . ."

(Malaumud-Goti 1996: 114).

Of course, this is no mere fluke effect, but one of the intended (and predictable) consequences of the exercise of terror. The point is to disarticulate possible sources of organized opposition.

Hampering social organization makes it significantly more difficult for people to *raise claims*

against the institutions of the state. In the long run, however, this diminished capacity for social coordination constitutes an obstacle to development.

The basic insights stemming from the literature on social capital and civic trust can be introduced at this point in order to round the case for the developmental relevance of dealing with the past. That trust between people is correlated with growth, and even with increased equity, there seems to be no doubt any longer. Large cross-country studies indicate that increases in levels of trust between people are associated with increases in growth both in gross domestic product (GDP) and investments, and that inequality is associated with lower trust levels (see Zak and Knack 2001; Knack 2002). Accounts of the developmental impact of civic trust have centered on its contribution to diminishing transaction costs, and, when absent, on the decrease in rates of investment. Several cross-national studies using a variety of indicators show strong correlations between respect for civil and political rights and economic growth, and show conversely that violence and political instability are negatively related to growth rates and investment (see World Bank 2011: chaps. 2 and 3).

In order to move beyond mere correlations, a few words about civic trust are in order. The sense of trust in question here is not the thick trust that characterizes relations between intimates, but

neither is it reducible to a mere expectation of regularity or predictability. Trust, as an alternative to monitoring and the appeals to sanctions, involves shared normative expectations: I trust someone not merely when I experience confidence in the regularity of his or her behavior – I can be highly confident that in grossly corrupt systems officials will predictably try to extort me, but that, of course, does not mean I trust them – but rather, when I am convinced that among that person’s reasons for actions is a commitment to values, norms, and principles that we share. In dealing with strangers and with institutions in complex and highly differentiated societies, the relevant values, norms, and principles are abstract and general. So, we trust an institution when we act on the assumption that the institution’s constitutive norms are shared by those who run and participate in the institution.

This account of the effects of massive human rights violations, which links a norm-based account of victimhood (rights violations shatter normative expectations fundamental to our sense of agency in the world) with a norm-based account of civic trust, helps explain why dealing with the past should be of interest from the standpoint of development. Aside from the arguments about the effects of systematic violations on human capacities, on agency, and on civic trust or social capital, this account should be helpful in two ways: first, by providing an explanation of how the effects of serious human rights violations ripple from direct victims to much broader

constituencies, the account clarifies that justice is not a matter of interest to victims alone. To the extent that the violation of fundamental rights is at the same time the breach of general norms, *everyone* is affected by it. Ultimately, this is not only a function of bonds of concern or even of relations of dependence, but mainly, a function of the nature of the norms that are shattered when human rights are violated—namely, the general norms that give rise to the expectations that undergird basic agency and social competence. Focusing on the diminished agency (at least in the sense of the counterincentive people receive for *raising* claims) not just of victims but of entire communities that comes in the wake of massive violations of human rights helps us to see the developmental relevance of “dealing with the past.”

Second, and more importantly, the account clarifies that the reason why confronting past atrocities is relevant for development purposes goes beyond their spill-over effects from victims to others—what in a sense is not an irrelevant issue of numbers. It also deepens our understanding about the way the effects work: massive human rights violations do not simply diminish the capacity for agency, the willingness of people to raise claims, and in that sense their possibility of initiating action in the world; for development purposes, it may be more compelling to stress that the violations thereby diminish the possibility of having people *act together*. One does not need to agree with the details of the social capital literature to

acknowledge that unaddressed massive human rights violations make social coordination more difficult, that this has developmental consequences, and therefore to consider seriously whether the type of redress offered by transitional justice measures can, indeed, make a contribution to development.¹⁰

There is a significant literature on the negative impact of authoritarianism on levels of civic trust and the depletion of social capital in the Central and Eastern European countries (see Kornai and Rose-Ackerman 2004; Rainer and Seidler 2009), and reference has already been made to a similar treatment of the Argentinean case (Malamud-Goti 1996). There is nothing peculiar about these cases. The argument in this section is meant to explain the general mechanisms at play. I will close with a comparison between two countries meant to illustrate the huge developmental blockage that the inability to deal with the past represents and the advantages of finding ways of doing so. Contrast the experience of Bosnia and Herzegovina with that of South Africa. In Bosnia and Herzegovina, while important advances were made in increasing citizen trust in some institutions after the war—notably the judiciary and the army, due to vetting and professionalization measures—the lack of an accepted shared narrative over responsibility for the war undoubtedly plays a role in blocking collective action at national level, constraining important reforms that the society would need to address social, economic, security and fiscal

challenges, not to mention the prior actions necessary to move forward on European Union accession. In South Africa by contrast, while society still faces political tensions and developmental challenges as well as outstanding claims related to accountability for specific abuses, recognitions of the past by leadership, the truth commission's work, and associated measures have created a largely shared narrative of Apartheid history across South African society. This in turn has enabled it to combine redistributive measures with responsible macroeconomic management and to face new challenges, whether on social and economic policy or in dealing with the recent popular debate over appropriate artistic freedom related to images of leadership.

Fostering trust

Accepting the adverse effects of a failure to address the legacy of the past, there is still, of course, an outstanding question: how can transitional justice measures help? One way of answering this question would be by marshaling the empirical data that would show that in fact, the implementation of the measures contributes to overcoming the developmental blockages mentioned, in particular, that they strengthen human capabilities, help rectify adverse terms of recognition and resolve high degrees of social and institutional mistrust. This sort of empirical

work is in its infancy.¹¹ There is no agreed upon measuring methodology and, indeed, no agreement about what to measure to begin with (see Duggan 2010; van der Merwe, Baxter, and Chapman 2009). While some of the results of incipient quantitative research are heartening (see Olsen, Payne, and Reiter 2010; Sikkink 2011) most of it consists of efforts to establish correlations, and this will rarely be sufficient to settle any substantive disagreement. Here, then, I will rather move to an explanatory plane and sketch, albeit very briefly, the reasons why it makes sense to think that transitional justice can contribute to the accomplishment of developmental ends, trying to illustrate the claims with some examples.¹² Needless to say what follows is not a *substitute* for empirical verification. But it is significant that it is possible to offer an account of the causal links that can lead from the implementation of the measures to these results.

Here nothing more than a sketch of those links is possible. In a nutshell:

Recognition. Arguably, the various transitional justice measures aim at providing recognition to victims (see Honneth 1995, 2007; on the notion of recognition). The type of recognition that is relevant is one that acknowledges the victims' status as victims and the abuses to which they

were subject, gives public space to their stories, and tries to reverse the marginalisation which they typically suffer. But this is not all. In fact, it is even more important to recognize their status as *rights bearers*, ultimately, as co-participants in a common political project, that is, as *citizens*.

How do the measures promote this aim? Truth-telling mechanisms explicitly provide a forum for acknowledgment by the state of victim's experiences and responsibility for abuses; prosecutions by affirming that the violation of the rights of others shall not remain inconsequential; reparations by signaling that the state takes violations of rights sufficiently seriously as to mobilize resources, something that typically involves the expenditure of "moral capital" as well. Finally, institutional reform, with vetting processes as a starting-point, contributes to recognizing people as rights-bearers to the extent that it re-affirms the force of norms according to which state officials are public servants, and that, from these norms, flow rules about job retention, promotions, and dismissals. These mechanisms are often very powerful vehicles for providing voice to marginalised groups in society, which is in itself a poverty reduction goal. In Morocco, for example, the truth commission recognized for the first time, in public hearings, the experience of women subjected to sexual and other forms of abuses as part of state-sponsored repression. In Peru, the truth commission gave voice to men and

women from ethnic communities who had long been marginalised from most economic, social, and developmental debates.

Hence transitional mechanisms can promote individual improvements in welfare by acknowledging people's stories, desire for justice, and rights to compensation – and, perhaps more importantly, by giving them channels of voice and recognition as having equal citizenship rights. Transitional justice measures can be seen as a set of judicial and non-judicial measures that serve to signal the significance of the status of citizens as rights bearers. This is a not inconsequential shift when one thinks of the demands displayed during the Arab Spring: polling of citizens in these and other countries have noted that they place justice and accountability among their highest priorities, along with practical concerns such as security and job creation.

Fostering Civic Trust and positive social capital. The argument concerning the trust-inducing potential of transitional justice measures must start by reiterating the point that trust should not be reduced to mere empirical predictability, but that it involves an expectation of a shared *normative* commitment. Trusting an institution, the case that is particularly relevant for us, amounts to assuming that its constitutive rules, values, and norms are shared by its members or

participants and are regarded by them as binding. So, to illustrate, predictable abuses on the part of police forces, from extortion to torture, needless to say, do not produce confidence in them. The lived experience of the police force's willingness to protect all citizens regardless of their political, social, religious or ethnic affiliation, and in accordance with the law, does.

How do transitional justice measures promote this sense of civic trust? Prosecutions can be thought to promote civic trust by reaffirming the relevance of the norms that perpetrators violated. Judicial institutions, particularly in contexts in which they have traditionally been essentially instruments of power, show their trustworthiness if they can establish that no one is above the law. View the effect of the Nuremburg trials, the prosecution of Charles Taylor, or that of both senior and junior military officials in Chile and Argentina. An institutionalized effort to confront the past through truth-telling exercises might be seen by those who were formerly on the receiving end of violence as a good faith effort to come clean, to understand long-term patterns of socialization, and, in this sense, to initiate a new political project around norms and values that this time around are truly shared. This was part of the point behind the South African Truth and Reconciliation Commission. Reparations can foster civic trust by demonstrating the seriousness with which institutions now take the violation of their rights, a seriousness that is manifested, to put it bluntly, by the fact that "money talks" – and so do

symbolic reparations measures – that even under conditions of scarcity and competition for resources, the state responds to the obligation to fund programs that benefit those who were formerly not only marginalized but abused. Chile and Morocco, for instance, have valuable lessons to teach in this area. Finally, vetting can induce trust, and not just by “re-peopling” institutions with new faces, but by thereby demonstrating a commitment to systemic norms governing employee hiring and retention, disciplinary oversight, prevention of cronyism, and so on. Bosnia-Herzegovina, post-Dayton, established an ambitious vetting program, and Argentina managed to vet, albeit indirectly, promotions to the highest ranks of the military.

In addition to pointing out the causal pathways that may lead from the implementation of transitional justice measures to the provision of recognition and the strengthening of civic trust which are relevant for the achievement of development goals, it is worth pointing out that the present account allows for the formulation of the social mechanisms through which transitional justice can achieve these (On the notion of social mechanisms, see Hedström and Swedberg 1998). The two main mechanisms are manifestly relevant from the standpoint of development; these are *norm-affirmation* and the *articulation and disarticulation of social networks*.¹³ I address norm affirmation in the conclusion.

Dismantling of “spoiler” networks and negative social capital. To start with the ‘negative’ first, transitional justice measures have the capacity to disarticulate some social networks, and to respond to pernicious forms of social capital, and both are developmentally relevant. The Central American cases provide ample evidence that networks within security forces who have conspired or been used to carry out abuses are frequently recycled into organized criminal groups involved in illegal trafficking activities, or that they remain as a “standing force” that threatens future institutional and even political change. Transitional justice measures aimed at institutional reform—vetting, civilian oversight of the security forces, professionalization programs—help lower the risks of “spoiler” networks which may challenge future development.

Articulating civil society networks and fostering social capital. Transitional justice measures also serve to help articulate social capital, through incentivizing the formation of civil society networks. There is sufficient international experience with transitional justice measures now to assert confidently that one of the virtually inevitable consequences of even putting one of these measures up for discussion in the public agenda in a country – let alone implementing one such program – is the formation of a plethora of civil society organizations. Transitional justice catalyzes civil society organization. This is as true of reparations measures as it is of truth

commissions, and as true in South Africa as it is in Morocco and Peru. We are currently watching this mechanism in action in Tunisia and even in Egypt, where civil society organizations doing work on transitional issues are multiplying rapidly. This is no mere unintended albeit frequent correlate of transitional justice measures; my point here is that it is an important explanatory mechanism: transitional justice measures work, to the extent they do (that is, they help to provide recognition and to promote civic trust), in virtue of their success in catalyzing the (re)articulation of networks.

Rule of law

The implementation of transitional justice measures can be considered both as a manifestation of development in its own right—for justice is a part of development rather than outside it—and as an instrumental contribution to the attainment of conditions that are needed for development.

This dual character of transitional justice is not unlike that of another concept it is closely related to both in theory and in practice, namely, the rule of law, which has also been thought to be both instrumentally and inherently valuable. Virtually all transitional justice measures have been defended on the basis that they promote the rule of law (for a review of some of the relevant arguments, see de Greiff, 2006).

In this final section I will shed this reticence, not the least because of the prominent role that the rule of law arguments have long played in development thought, a role highlighted in institutionalist strains in economics and development (see North, Wallis, and Weingast 2009). North and new institutionalists take a commitment to “liberal” associational norms and to the constraints on the distribution and exercise of powers through formal laws that regulate, among other things, the very process of institutional change, in other words, the commitment to the rule of law, to be a critical if not *the* critical explanatory factor in development.

Instead of rehearsing the arguments for the developmental relevance of the rule of law, I will continue with the explanatory turn I took in the previous section and outline the way in which transitional justice can be thought to strengthen the rule of law. The various transitional justice measures contribute to strengthening the rule of law as follows: criminal trials that offer sound procedural guarantees and that do not exempt from the reach of justice those who wield power illustrate nicely the generality of law; truth-telling exercises that contribute to understanding the many ways in which legal systems failed to protect the rights of citizens provide the basis on which, *a contrario*, legal systems can behave in the future; reparations programs that try to redress the violation of rights serve to exemplify, even if it is *ex post facto*, the commitment to

the notion that legal norms matter; and, finally, institutional reform measures, including those that screen out those who abused their positions, help to make rule of law systems operative for the future in the service of all citizens.¹⁴

Consistent with the interest in understanding how the measures can be thought to attain whatever ends are attributed to them, and not just in observing correlations, here again I think it makes a difference not just to establish possible causal pathways but to articulate a social mechanism: the overall strategy I have followed up to this point has been one that emphasizes the importance of norms; a norm-based account of the effects of human rights violations (including the weakening of agency and the depletion of social capital) has been linked to norm-based accounts of recognition and of civic trust, as two of the ends which transitional justice can promote. There is of course, no need to add that the notion of the rule of law is itself norm-based. There is no plausible understanding of the rule of law that does not depend on insisting on the centrality of some norms. More interesting, then, is to point out that providing recognition, promoting civic trust, and strengthening the rule of law, depends upon the successful affirmation of the same norms: recognition and civic trust are closely related to one another: recognition implies respect for a certain status, a specific *standing*, that of a legal subject—and thereby one possessed of rights, defined in terms of basic norms. It is precisely on this ground that persons can develop

the attitudes and dispositions in their interactions with others who remain, largely, strangers, and in their interactions with impersonal institutions, which characterise (civic) trust. The status in question, that of *citizen*, and the dispositions that accompany it, rest, in turn, on the web of norms that constitute the democratic rule of law, the basic means both of stabilising expectations and diminishing risks, on the one hand, and, on the other, of allowing claims-raising as a fundamental activity when the norms are breached.

The policy implications of this approach to the links between transitional justice and development are several. In the context of the wider debate on development goals post-2015, it raises questions as to the incorporation of justice aspects as both an enabling goals and final measure of development outcomes (by no means only transitional justice, rather transitional justice mainstreamed into other measures of progress in meeting people's aspirations for justice). In operational terms, it would argue for closer links between national processes of decision making to address crimes of the past, with future priorities. This is not an argument for giving absolute primacy to transitional justice measures in national development planning—like other measures to improve welfare and governance, trade-offs will be needed on the timing, cost, and sequencing of measures—but rather to consider transitional justice as an integral part of societal

planning (and budgeting) in situations of post-conflict recovery or transition from authoritarian rule.

Finally, this chapter raises questions for a future research agenda. I have noted examples of existing research on how citizens perceive accountability for past abuses as part of their overall welfare, and on the impact of transitional justice measures on economic and social development. An equally promising angle for research is the reverse causal link: how do development measures—in education, in civic and community empowerment, in regulatory reform—support outcomes in terms of accountability for past abuses? Both these angles merit more research in the coming period. This is particularly relevant since the field is seeing a “fourth wave” of demands for transitional justice, most notably in the Arab States, but equally involving countries in Europe, Asia, Africa, and Latin America which have yet to fully grapple with these issues.

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The views expressed in this chapter do not necessarily represent those of the ICTJ. It tracks closely views elaborated in much more detail in de Greiff (2009, 2011, and 2012). My gratitude to Sarah Cliffe and David Malone who provided extensive comments, and to Shaina Wright for research assistance.

¹ In the past that transitional justice measures were applied largely in cases where gross violations of human rights had taken place. Its increasing application in post-conflict settings requires an expanded reference: “serious crimes under international law” including violations of both international human rights law and humanitarian law. In the remainder of the chapter, I relax the use of these terms and mention non-technical terms such as abuse, atrocity, and terror to refer to phenomena to which transitional justice seeks to respond.

² Full disclosure: I participated in the process leading up to the production of the WDR, advising the team responsible for the Report on justice-related issues.

³ Legally, transitional justice responds to violations of foundational elements of the international legal architecture: among others, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Civil and Political Rights; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention for the Protection of All persons from Enforced Disappearance; the Geneva Conventions of 1949; the 1977 Protocol Additional (No.I) to the Geneva Conventions of 12 August 1949; and the Protocol Additional (No.II). Several UN documents reflect the specific ways in which transitional justice measures constitute an effort to give substance to internationally binding obligations to secure the rights to justice, truth, and reparations. UN Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict States*, U.N. Doc. S/2004/616, August 23, 2004. *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, Diane Orentlicher—Add. 1: *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, U.N. Doc. E/CN.4/2005/102/ Add.1, February 8, 2005; and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of the International Humanitarian Law*, U.N. Doc. A/RES/60/147, December 16, 2005.

⁴ Of course, this is not to say that transitional justice has adopted these practices unmodified. The history of transitional justice has included efforts to avoid the vices of some of these practices, including the retroactive application of law in criminal procedures, the politicization and lack of transparency of commissions of inquiry, the state-centric nature of old reparations, and the arbitrariness of mass purges. For some representative samples of literature on each of the four basic measures, see Lutz and Reiger (2009); Hayner (2011); de Greiff (2006); and Mayer-Rieckh and de Greiff (2007).

⁵ Arthur (2009) usefully reminds us, however, that it was not just the Cold War, but the apprehensions of European colonial powers, particularly of France because of its “Algerian problem,” which explain the post-war blockage concerning the establishment of a permanent international criminal court (until the adoption of the Rome Statute of the ICC in 1998).

⁶ José Zalaquett (1988) presents the first attempt to establish correlations between types of transitions and possible outcomes. This became of interest to political scientists. Huntington (1991: 209) presents a similar model. Correlations between transitional justice and other factors including the predecessor regime’s degree of intolerance, post-transitional elite turnover, and previous experiences with some of the measures have been attempted in the literature.

⁷ The information collected over the years by civil society organizations would also play an important role in the trials that started much later in Chile, and that resumed in Argentina after 2001. Chile and Argentina each have more than five hundred ongoing cases against former abusers. See Collins (2011) and Filippini (2009).

⁸ Highlighting the publication of Kritz's *Transitional Justice* as a milestone in the development of the field is not to be taken as an argument about the importance of "academic" literature. In fact, the divide between academics and practitioners, especially in the earlier stages of the development in the field, is artificial, for a good number of the individuals who helped give shape to the field in its origins were both academics *and* practitioners (see Arthur 2009: 344–45).

⁹ A/RES/HRC/18/7, 11 October 2011. The author was elected by the HRC for this position.

¹⁰ It may be objected that this implies that economic activity automatically diminishes with the onset of human rights violations, which empirically may or may not be the case. The objection, however, oversimplifies the complicated relationship between politics (broadly conceived) and economic activity. The argument is that trust is one (of many) enabling conditions of social coordination, and therefore weak bonds of ('bridging') trust do not, as in a uni-causal mechanism, impede growth. Obviously, reality is more complicated than that.

¹¹ I hasten to add that this is true not just of transitional justice but of most complex interventions in the social world, even those with a longer history and both synchronously and diachronically larger budgets. These include SSR programs, rule of law and justice reform programs, and, indeed, a good part of development assistance work.

¹² Some caveats are in order: the argument is not predictive, but explanatory. Whether the implementation of transitional justice measures will bring about these effects or not in a particular situation is an empirical matter that cannot be decided a priori. And, obviously, the argument is one about contributions to the overcoming of those developmental blockages brought about by human rights violations, not about either causal sufficiency, or about developmental blockages *tout court*. See de Greiff (2011, 2012) for a longer discussion about the assessment of the impact of transitional justice initiatives.

¹³ I am using 'networks' here to refer to both formal and informal, official and unofficial 'groups,' organizations, or enterprises (and thus in a sense that is akin to the organizational dimensions of the established 'practices' to which Douglass North (1991) refers with the term 'institutions.')

¹⁴ This commitment to the rule of law is not exhausted by a commitment to a formalist understanding of the notion, for such an understanding is compatible with many forms of arbitrariness, as long as these are regularly and predictably patterned. If the notion of the rule of law is to have any critical purchase, it has to take seriously the idea that legitimacy refers also to characteristics of the very process of *making* laws and to the substance of the laws thus produced.