Research Paper

The Applicability of Transitional Justice in Pre-Conflict Contexts

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About the Author

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About the Grand Challenge

Inequality and exclusion are among the most pressing political issues of our age. They are on the rise and the anger felt by citizens towards elites perceived to be out-of-touch constitutes a potent political force. Policymakers and the public are clamouring for a set of policy options that can arrest and reverse this trend. The Grand Challenge on Inequality and Exclusion seeks to identify practical and politically viable solutions to meet the targets on equitable and inclusive societies in the Sustainable Development Goals. Our goal is for national governments, intergovernmental bodies, multilateral organizations, and civil society groups to increase commitments and adopt solutions for equality and inclusion.

The Grand Challenge is an initiative of the Pathfinders, a multi-stakeholder partnership that brings together 36 member states, international organizations, civil society, and the private sector to accelerate delivery of the SDG targets for peace, justice and inclusion. Pathfinders is hosted at New York University's Center on International Cooperation.

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Photo credit: Demonstration in Madrid to request the construction of a Center for Peace and Memory of the fight against the Franco regime. Adolfo Lujan/Flickr (CC BY-NC-ND 2.0)

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1. Introduction to Transitional Justice

The current moment can be characterized, politically, in terms of two macro-level phenomena, a lurch towards populism (of the left and the right) on the part of many leaders (and eventually, their followers), and simultaneously, unusually large popular mobilizations in favor of progressive causes. These seemingly dilemmatic factors arguably share a common underlying cause, namely, great lack of trust in the familiar mechanisms of political representation—a lack of trust which itself has deeper roots in increasing inequality and dysfunctional forms of the politics of recognition.[1]

The question that this paper will consider is whether some of the lessons learned during the last forty years of practice of transitional justice in post authoritarian and post conflict settings can be of use in pre- or non-conflict settings.[2] The answer will be a qualified yes. Transitional justice, it has been argued, is a mechanism of social integration,[3] and to that extent, it has some valuable lessons to teach. On the other hand, transitional justice is mainly an accountability tool. Thus, in the sort of pre-conflict setting that this paper is concerned with, before criminal accountability is called for, the question is not so much about the utility of each and every one of its tools, but of some of them, and especially, of the lessons learned in trying to repair a badly torn social fabric.

1.1 Transitional Justice

For the sake of clarity, let me begin with a stipulative definition. Transitional justice is understood as a *comprehensive* policy implemented to cope with the legacies of massive and systematic human rights violations and abuses, and to restore or establish anew the currency of human rights. Such a policy has as its core elements truth, justice, reparations, and guarantees of non-recurrence. In addition to the immediate function each element of a comprehensive transitional justice policy is supposed to serve, namely, to impart (criminal) justice, disclose truth, redress violations, and prevent their recurrence, a comprehensive transitional justice also pursues two 'mediate' ends, to provide recognition to victims, not only as victims but as rights-holders, and to promote civic trust. Such a policy also pursues two 'final' goals, to strengthen the rule of law, and to promote social integration or reconciliation.[4]

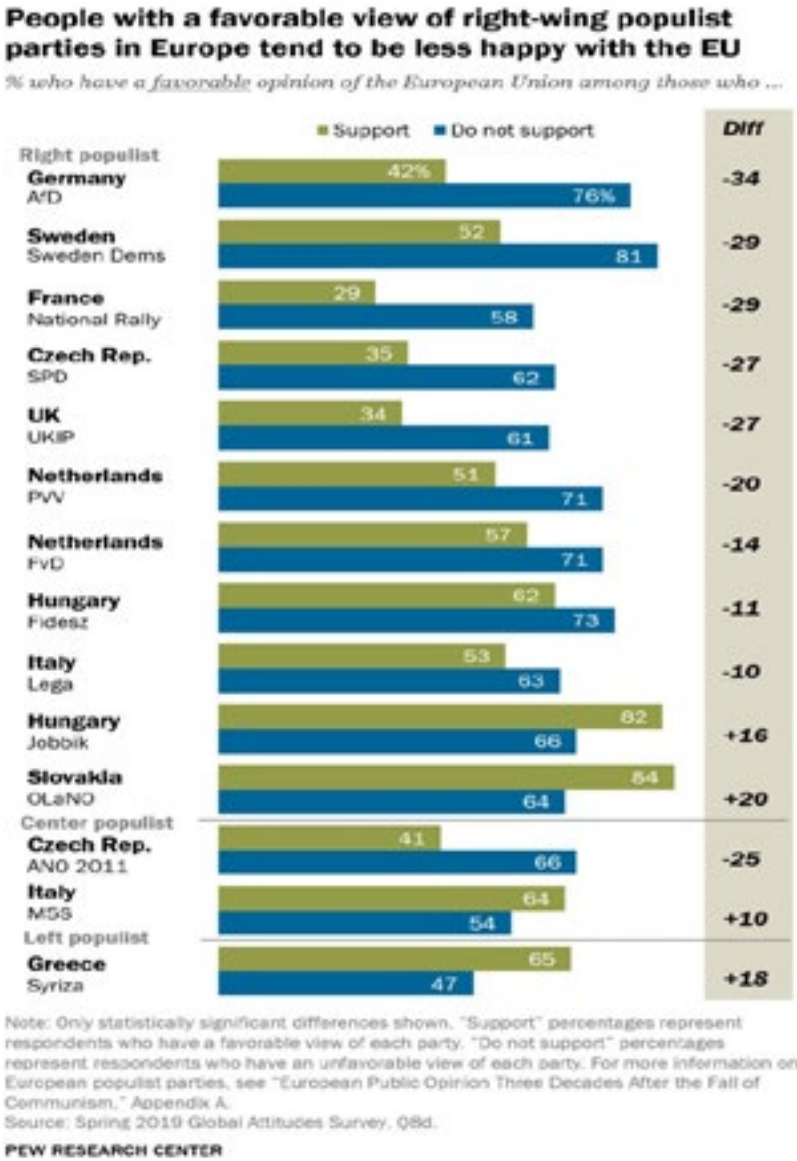
Whether transitional justice is of any use in contexts different from those where the model took shape (post-authoritarian transitions) or where it has with increased frequency been applied (post-conflict countries),[5] requires further specification. For purposes of this paper, there are a few social factors increasingly common in pre conflict countries that are the main focus of concern, all of them related to what may be called 'failures of social integration.' Politically, polarization has become an issue in many countries; social, xenophobic and in some cases, racist, tendencies have become accentuated. Furthermore, trust—both interpersonal and institutional—has plummeted. Most of these factors are also left in the wake of authoritarian terror and of conflict, so at least *prima facie* the case for the utility of transitional justice in the pre conflict contexts is not senseless, despite what would be its anachronistic application.

1.2 Polarization

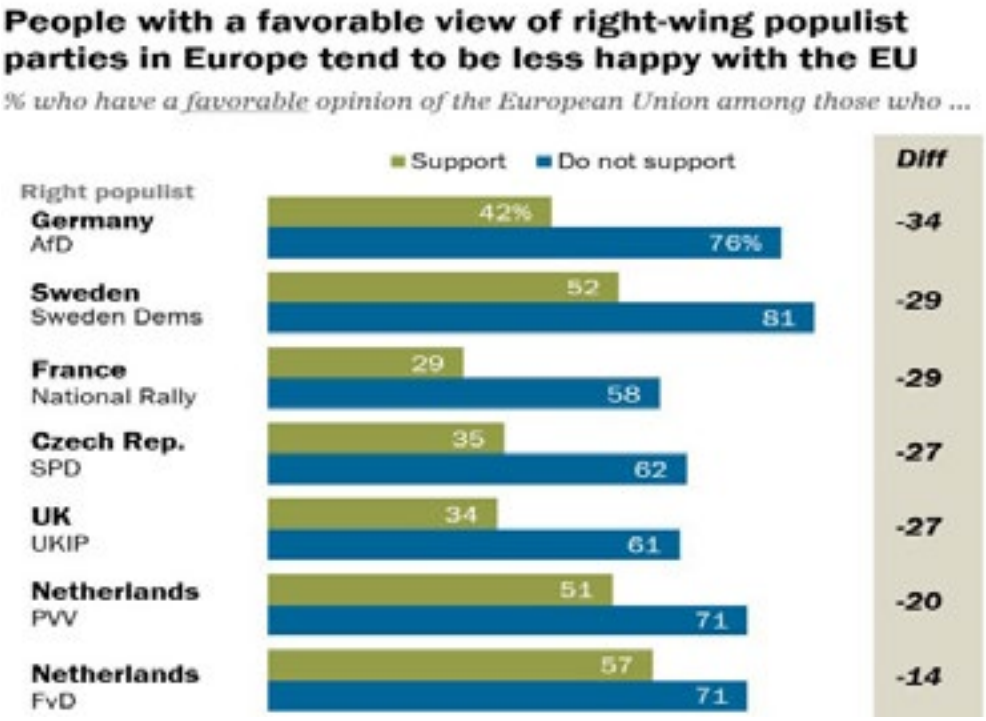
Even in some of the transitions of the 'third wave'[6] and those that followed, in which there was a regime collapse (e.g., Argentina), that collapse did not automatically do away with support for the regime, nor, consequently, with political polarization. Political preferences, we know, are not simply a function of outcomes, so even devastating political failures do not translate, especially in the short run, into a loss of support; there is always the possibility of 'explaining away' or rationalizing the failure, alleging disloyalty, conspiracies, or external interventions, to cite just a few explanatory strategies. Germany's catastrophic defeat in WWI was explained by the erstwhile warmongers as a result of the 'backstabbing' by Jewish military officers; the Argentine Junta's shambolic military adventure in the Falklands and the consequent fall of the regime did not deprive it totally of support, and Pinochet still had the support of almost half of

Chileans while the Spanish request for his extradition on human rights charges was processed in English courts (October 1998-March 2000), and upon his return to Santiago, Congress, by a huge majority, approved a Constitutional amendment creating the status of 'ex-president,' granting him not only an allowance, but, more importantly, legal immunity.[7] The list can be extended easily: in 1999, Guatemalans voted against a Constitutional referendum that embodied some of the structural changes that had been negotiated and agreed upon by the parties to the conflict in the Comprehensive Peace Agreement signed between 1994 and 1996 and which put an end to a conflict lasting almost four decades. Similarly, in 2016 Colombians voted against the referendum that was supposed to ratify the Peace Agreement negotiated by President Juan Manuel Santos (2010-2018) with the FARC in Havana from 2012-2016, largely on account of the enduring influence of former President Uribe (2002-2010), a hardline conservative. Thus, not even conflict, indeed, not even *defeat* in conflict, or, alternatively, the prospect of peace, is enough to weaken support for those that were either responsible for the onset of fighting, for the military defeat, or, for those who oppose the *end* of the conflict.

In many 'ordinary,' non-conflict settings, the fact is, political polarization—in the 'classical' sense of ideological distance between parties[8]—has grown in the last few decades, especially after the Great Recession of 2007-2009.[9] European parties became polarized around austerity measures, the treatment of countries in crisis within the monetary union, and more generally, the European Union itself. Regarding the latter, for instance, the difference in views between those who support populist parties and those who do not, can reach almost 35 percentage points, as the following Pew Research table suggests:[10]



Political polarization, however, is not exclusively a European, or Northern, phenomenon. Turkey is currently one of the most polarized countries in the world, India is following a similar path, and so is Brazil.[11] The US is in this sense only an extreme example. Elite polarization started in the 1970's, mass polarization caught up in the 80's, and the trends have only worsened since then. Nor is contemporary polarization simply a question of ideological distance between contenting parties. Contemporary polarization as Jennifer McCoy and Murat Somer, have argued in a series of splendid articles, involves a heightened affective dimension, the deployment of identity markers in order to create in- vs. out group loyalties and antipathies, the construction of zero-sum scenarios which hamper political collaboration, and which ultimately becomes 'pernicious' in contributing to the erosion of democratic norms.[12] The titles of some of Pew Research reports illustrate McCoy's and Murat's understanding of polarization and its pitfalls: in 2006 Pew issued a report titled "Democrats and Republicans See Different realities;"[13] in June 2012 it published "Partisan Polarization Surges in Bush, Obama Years;"[14] In 2014 in "Political Polarization in the American Public" Pew reports that "Republicans and Democrats are more divided along ideological lines—and partisan antipathy is deeper and more extensive—than at any point in the last two decades."[15] On November 10, 2016, within a week of the election that led to Trump's victory, Pew reports about "A Divided and Pessimistic Electorate;"[16] and in September 2021, in "How America Changed During Donald Trump's Presidency" it states "even before he took office, Trump divided Republicans and Democrats more than any incoming chief executive in the prior three decades.[17] The gap only grew more pronounced after he became president. An average of 86% of Republicans approved of Trump's handling of the job over the course of his tenure, compared with an average of just 6% of Democrats—the widest partisan gap in approval for any president in the modern era of polling."[18] Given these trends, it is not surprising that cross party collaboration, as many other aspects of American political, economic, and cultural polarization are back at Gilded Age levels, as argued persuasively by Putnam:[19]



According to Pew,

> The 2020 presidential election[20] further highlighted these deep-seated divides. Supporters of Biden and Donald Trump believe the differences between them are about more than just politics and policies. A month before the election, roughly eight-in-ten registered voters in both camps said their differences with the other side were about core American values,[21] and roughly nine-in-ten—again in both camps—worried that a victory by the other would lead to "lasting harm" to the United States.[22]

3. Xenophobia and Racism

Perhaps more worrisome than political polarization *per se* (some degree of which may in fact be salutary –particularly in bi-partisan political systems, since without departures from the center there would be little party differentiation[23]) is the fact that some of the reigning political divisions have to do with opinions about 'others,' including foreigners and peoples of different races. Increases in xenophobic and racist sentiments and incidents are in fact not so recent; some of them can be traced to the reactions to the economic slowdown of European economies in the 1970's: during the post war boom what the French call *les trente glorieuses*, in order to make up of labor shortages, Northern European countries actively recruited what they conceived of as temporary 'guest workers' (during this period unemployment rates in West Germany were 0.6 percent, 2.2. in the UK, and 2.5 percent in France). Thus, West Germany recruited 95,000 workers in 1956; by the early 1970's there were 4.1 million foreign-born workers in Germany, 3.4 million in France, 1 million in Switzerland, to give some examples.[24] The absence of wide-spread anti-immigrant sentiment in Western Europe changed rapidly, however, with changes in the economy and in recruitment policies; incentives for return adopted after the slowdown had the unintended consequence of changing the composition of immigrant populations, for guest workers from Southern European countries were much more susceptible to those incentives than workers from Northern Africa. Thus, in France, for instance, "the proportion of immigrants from the Maghreb region of western North Africa increased by 16 percentage points from 1968 to 1982."[25] These combined trends soon manifested themselves in opinions about immigrants; whereas in 1988 only 18% of respondents to Eurobarometer in EC countries wanted the rights of immigrants restricted, three years later, in 1991, that figure had almost doubled, to 33 percent. The same percentage of French respondents thought that the members of the EEC should not accept immigrants from countries south of the Mediterranean, and 56 percent of them thought France already had too many immigrants. In Denmark, 25 percent of respondents agreed with their French counterparts that no immigrants from south of the Mediterranean should be accepted at all.[26]

These were early signs of trends that would only gather steam under the impetus of other converging forces, including the securitization of immigration issues post 9/11;[27] reactions to the increased job insecurity produced by the globalization policies adopted as a reaction to the economic slowdown that started in the 70's,[28] involving deregulation, freer circulation of capital, and, in the old economies, significant de-industrialization.

Xenophobic tendencies were greatly strengthened after the Great Recession of 2007-2009;[29] populist politicians have fueled these fears (aided, it must be said, by legitimate questions about dysfunctional immigration systems;[30] even the EU has been incapable of coming up with a sensible burden-sharing program); the massive influx of refugees from conflicts in Iraq, Afghanistan, and especially Syria, in 2015, stressed systems even in countries that were willing receptors, like Germany. Finally, the COVID-19 epidemic, was one more factor that in the recent past exacerbated xenophobic and racist tendencies.[31] The political yields of 'othering' have therefore increased over time. In Europe, both East and West, anti-Jewish and Anti-Muslim sentiments were already on the rise in 2005. In a survey conducted by Pew in 2005 through 2008, "[o]verall, looking across the six European countries surveyed…, the median percentage with a negative view of Jews…jumped from 21% to 30%, while the median percentage expressing an unfavorable opinion of Muslims…increased from 35% to 42%." In the three years covered by the survey, anti-Jewish sentiment grew in Spain, astonishingly, from 21 to 46%, and (less surprisingly) in Russia from 26 to 34%, while anti-Muslim sentiment grew in Poland from 30 to 46% and in Spain from 37 to 52%.[32]

Since 2008, xenophobia and racism globally have waxed and waned (arguably hand in hand with the different rhythms of economic recovery), but it has remained at high levels. Racism is not easy to measure precisely, for in surveys it tends to be underreported (people rarely either see themselves as racists or are willing to admit to it), and especially in Europe, for historical reasons, governments do not disaggregate data by race. However, disproportionate rates of incarceration, instances of racial profiling, and lower scores on all sorts of indices of well-being (when those disaggregate by race), provide evidence of persistent racism, globally.

In the US (which lacks a single data base for police violence country-wide), it is not just that the police kills significantly more people than in other developed countries (in 2018, US: 31 per 10 million, Germany 11/10M; Sweden 6/10M; Australia 3/10M; New Zealand 2/10M; UK <1/10M), but that it is four times more likely to use deadly force against Black people (273/100,000 black people, 76/100,000 white people in 2016).[33] In Canada, Indigenous people form 16 percent of the deaths by the police, but only 4.21 percent of the population (annualized over 20 years), and Black people form 8.63 percent of deaths and only 2.92 percent of the population.[34]

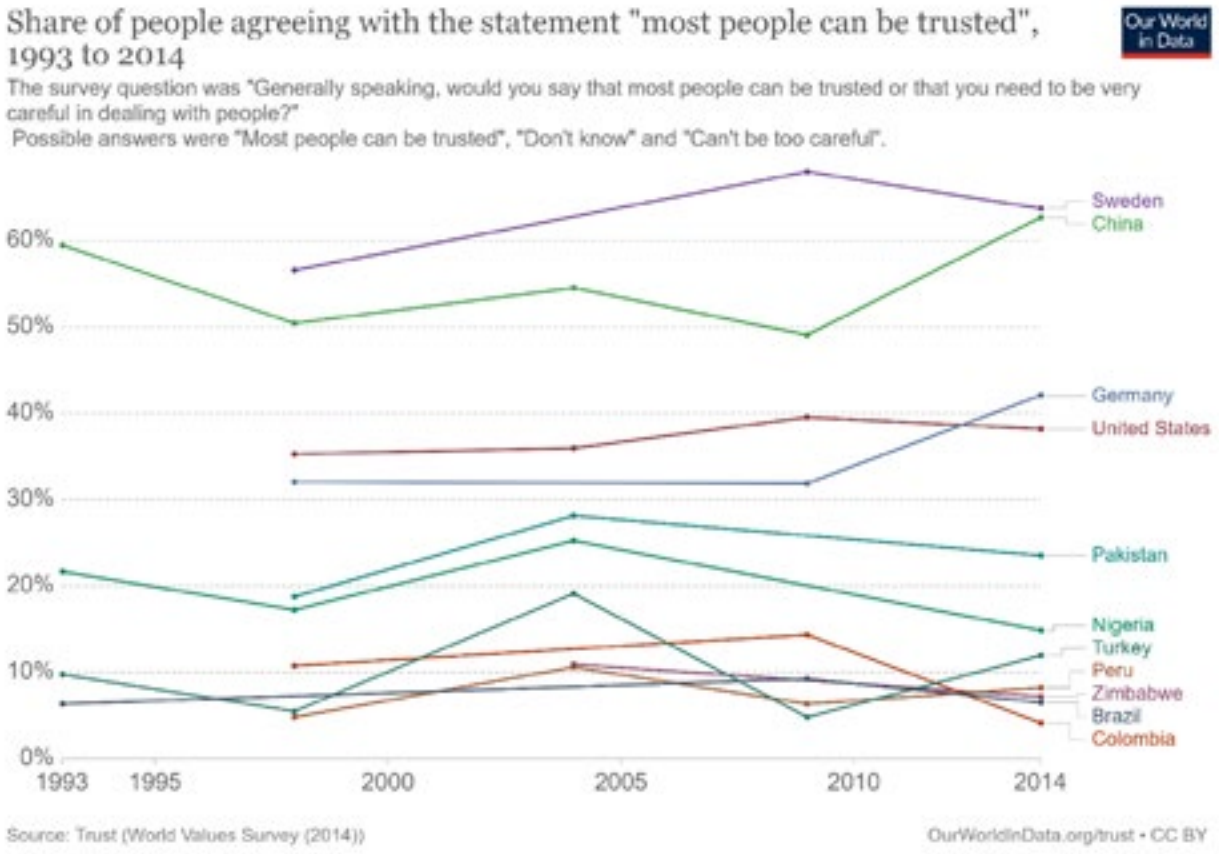
In Australia, Aboriginal and Torres Strait Islander people are significantly over-represented in prisons. About 27% of Australia's prison population were Indigenous in 2017, yet Aboriginal and Torres Trait Islanders make up about 3% of the population.[35] In the US, more than a third of people in prison are Black, who form less than 13 percent of the overall population.[36]

The EU countries are not exempt from these trends. The 2018 survey administered by the European Union Agency for Fundamental Rights across all twenty-eight EU members, "Being Black in the EU,"[37] paints a very similar picture; Finland, who has received for successive years a perfect score in Freedom House's Freedom in the World Index, recorded the highest rates of race-based harassment and violence in the EU, according to the survey. Across the EU, only 14 percent of victims of race-based harassment reported their experiences to the police or any other authority, in the belief that reporting would make no positive difference, despite awareness of anti-discrimination laws. [38]

In the US, although the population as a whole self-reports increasingly positive views about race,[39] there is no question that one of the most significant factors underlying political polarization has to do with questions of race. In 2019, "about seven-in-ten Republicans and Republican-leaning independents (71%) say white people get few or no advantages in society that Black people do not have. By contrast, 83% of Democrats and Democratic-leaning individuals say white people benefit a great deal or a fair amount from advantages not available to Black people, while only 16% see little or no such advantages."[40]

4. Trust

Since CIC has published on trust, I will be brief here.[41] The literature on trust, and on its correlate, social capital, is ample and diverse in terms of disciplinary approaches. It lacks, however, a shared definition of the term, which raises methodological problems, amongst others.[42] Economists and political theorists, for example, do not understand the term in the same way, and surveys including the World Values Survey, which has included questions about trust since 1990 leave the term undefined, so it is up the respondents to interpret it. The World Values Survey uses a version of the question first introduced by Rosemberg in 1956 in order to measure interpersonal or generalized trust.[43] The question reads, "Generally speaking, would you say that most people can be trusted, or that you can't be too careful in dealing with people?" Possible answers include "most people can be trusted," "don't know," and "can't be too careful."[44] Eurostat's approach is only slightly more illustrative, not because the question is necessarily better ("would you say that most people can be trusted?"), but because it acknowledges that trust admits of different magnitudes or degrees, and therefore asks respondents to use an 11-point scale, ranging from 0-10.[45] Using these coarse

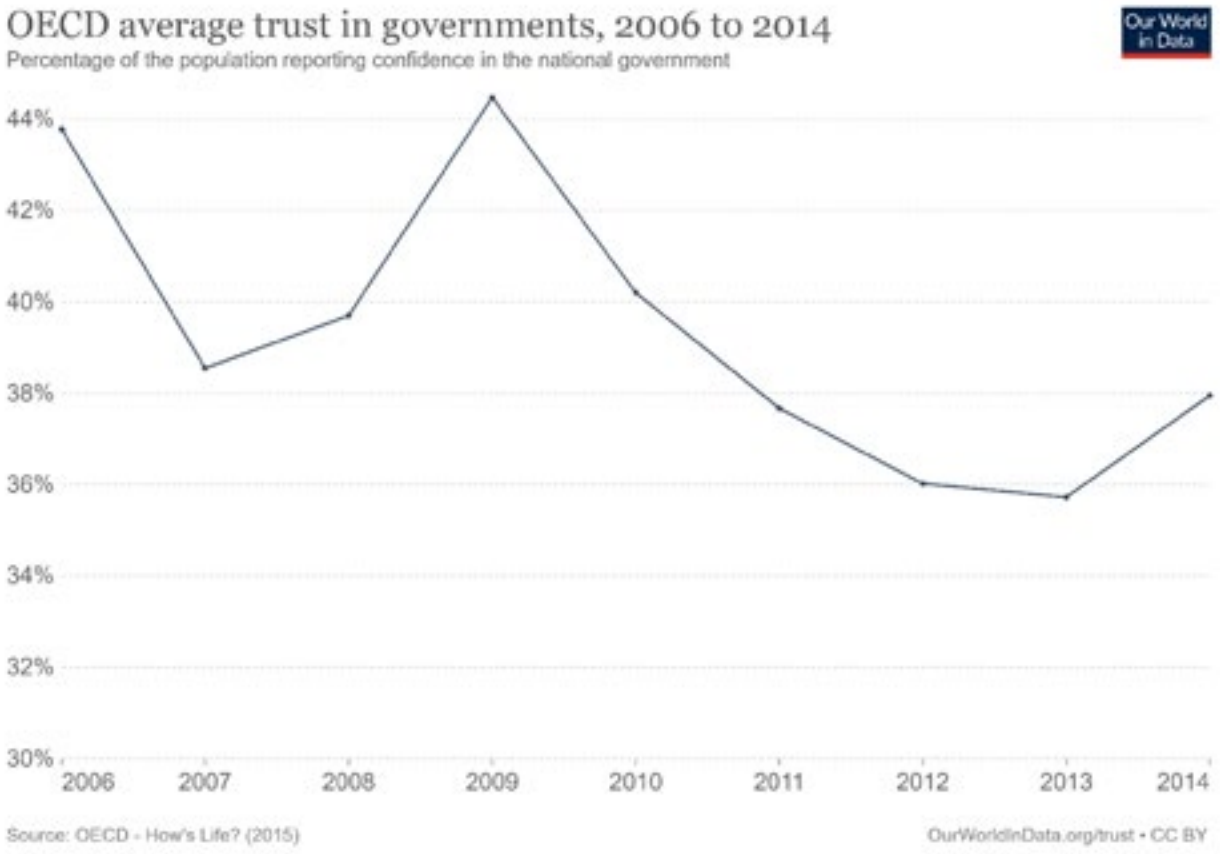


methods, one still gets an intuitively correct picture of social relations in different parts of the world:

Generally speaking, high-income countries have higher indices of interpersonal, generalized trust, with the Scandinavian countries at the top. Protestant countries, generally are more trusting than Catholic, or countries with other religions; Latin American countries score towards the bottom of the pile. Asian countries generally display high levels of trust in government authorities. Level of education correlates with levels of trust. As we saw above, economic crises usually leave in their wake not just political polarization, but a (time lagged) decline in trust.[46]

Institutional or political trust is measured via similarly coarse instruments. In the US, for instance, the relevant question in the National Election Survey (NES) starting in 1958, reads: "Trust in Government—How much of the time do you think you can trust the government in Washington to do what is right— *just about always, most of the time, or only some of the time*?"[47] The European Social Survey, again, is slightly more differentiated, both in asking about trust in different institutions (police, judiciary, political system—still leaving 'trust' undefined), and in using the familiar 0-10 scale.

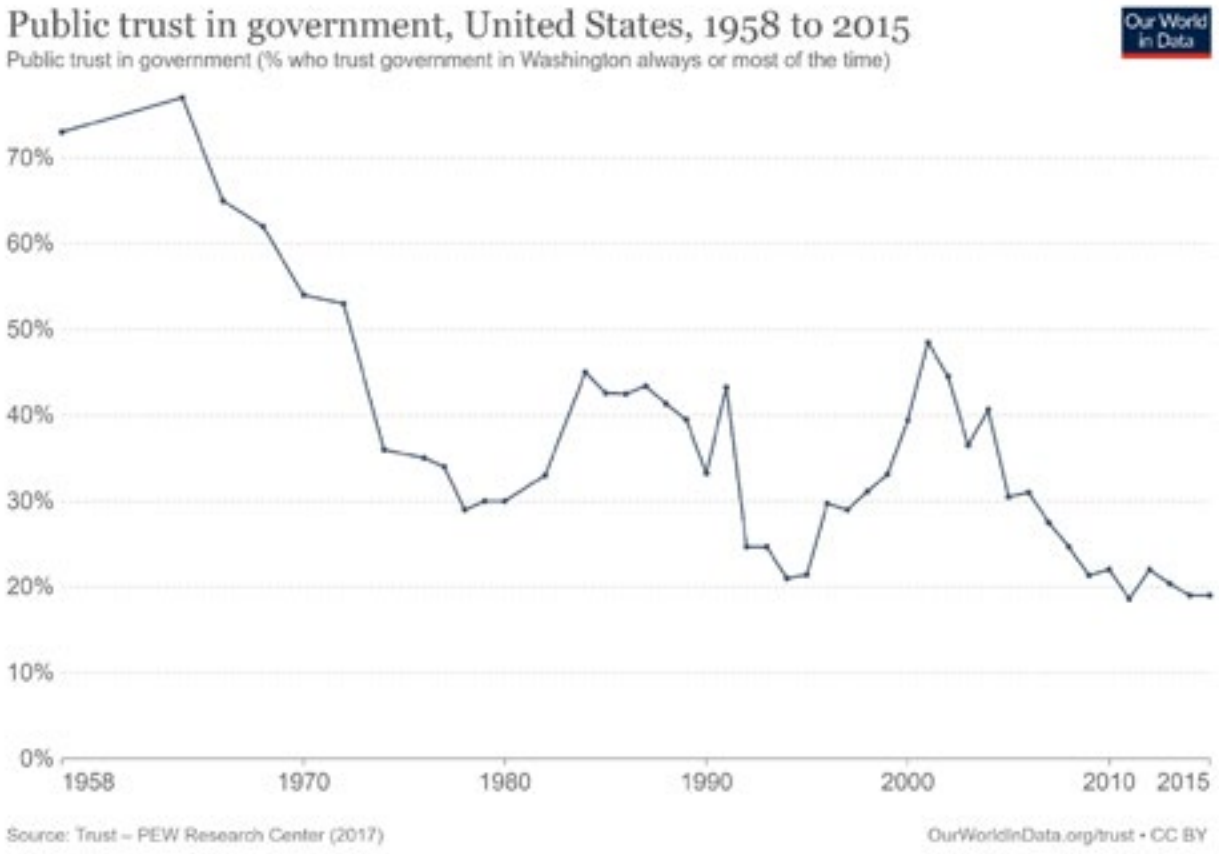
Regardless of the coarseness of the measuring instruments, the picture that time series suggests for the last



few decades is one of variable degrees of trust, but with a generally descending slope.[48]

The two shifts that are generally observable are the post Great Recession dip in trust in most countries,[49] and the increase in trust in 2020 provoked by the pandemic, alas, a short-lived increase, as other surveys demonstrate.[50] But more than shifts, what is noteworthy is the generally low levels of trust in government, even in OECD countries, an organization of largely wealthy countries with a mandate for good governance. Even before the pandemic, the organization itself declared (in common irony-free bureaucratese): "*Less than half of the population* in the average OECD country (43%) trust their national government. But this represents a slight improvement from the level (40%) recorded in the aftermath of the financial crisis in 2010-12 (Figure 16.5). Indeed, after a general deterioration post-2008, trust in government has now rebounded to just below 2006 pre-crisis values *in a quarter* of OECD countries. The largest increases compared to 2010-12 of more than 15 percentage points, occurred in the Czech Republic, Ireland, and Japan. Meanwhile, falls of more than 10 percentage points were seen in Chile, and 20 percentage points in Colombia. Overall, trust in the national government is highest (at 65% or more) in Luxembourg, Norway, and Switzerland, and lowest (at 25% or less) in Colombia, Italy, Greece, and Slovenia."[51]

The US, perhaps not surprisingly, is again in a class of its own, with the clearest descending curve, and low records of trust. According to Pew, "When the National Election Study began asking about trust in government in 1958, about three-quarters of Americans trusted the federal government to do the right thing almost always or most of the time. Trust in government began eroding during the 1960s, amid the escalation of the Vietnam War, and the decline continued in the 1970s with the Watergate scandal and worsening economic struggles. Confidence in government recovered in the mid-1980s before falling again in the mid-1990s. But as the economy grew in the late 1990s so too did confidence in government. Public trust reached a three-decade high shortly after the 9/11 terrorist attacks but declined quickly thereafter. Since 2007, the share saying they can trust the government always or most of the time has not surpassed 30%." Only about one-quarter of Americans say they can trust the government in Washington to do what is right



"just about always" (2%) or "most of the time" (22%).[52]

Before considering whether some of the lessons learned in the practice of transitional justice can help at all in pre-conflict but highly polarized societies, it is worth returning to the general account of pernicious polarization offered by McCoy and Murat. In their view, as stated before, contemporary polarization is not simply a matter of ideological distance. A succinct formulation of their view states: "we maintain that the constitutive trait of severe polarization is its inherently relational and political nature: it suppresses "within-group" differences and collapses otherwise multiple and cross-cutting intergroup differences into one single difference that becomes negatively charged and used to define the "Other." We therefore define polarization as a process whereby the normal multiplicity of differences in a society increasingly aligns along a single dimension, cross-cutting differences become instead reinforcing, and people increasingly perceive and describe politics and society in terms of "Us" versus "Them."[53] Their summary of the causal chain leading from polarization to democratic erosion is illuminating and worth a lengthy quotation:

- A polarizing society, or one that is open to polarization, whether from demographic change and political realignment, state or economic crises, or deep grievance and perceived injustice causing resentment, may be politicized by a leader or movement to mobilize political action from above or below.
- Polarizing political rhetoric centered on "Us" versus "Them" aligns group interests around one social cleavage, while suppressing and reducing the importance of other cross-cutting cleavages.
- Rhetorical focus on intergroup competition reinforces resentments and contributes to rising mass negative partisanship (dislike of out-party is greater than like of in-party) and affective polarization (sympathy toward in-group and antipathy toward the out-group).
- Deepening affective polarization, in turn, strengthens tribal tendencies of loyalty to in-group and conflict with out-party, enhances zero-sum perceptions, increases social distance, and decreases willingness to cooperate and compromise with the political out-group.

- Perceptions of the policies and political project of the "Other" as an existential threat to the nation lead both government and opposition groups to consider undemocratic actions.
    - Government supporters condone democratic norm violations and erosions and tolerate illiberal practices by the incumbent in the interest of keeping power and reducing threats.
    - Opposition groups are motivated to contest power outside the electoral arena if necessary. If they win, it indicates a change of power has occurred outside democratic rules (thus, democratic breakdown). If they lose, it facilitates greater erosion by the incumbent.

A simplified graphic representation of the causal chain follows.

Figure 1: Causal Chain from Polarization to Democratic Erosion[54]

2. Application of Transitional Justice

1. How transitional justice can help

The exercise of thinking whether work around a policy that was designed mainly for redress purposes may be useful preventively in entirely different contexts than those in which the model took shape hinges, in my opinion, on the following considerations: first, the current context is one in which truth-telling measures may be important, not the least as vehicles of recognition, which turns out to be closely related to the very possibility of redistribution as well.[55] Second, transitional justice measures have developed consultative and participatory methods that may be of some use in contexts characterized by different forms of fragmentation and exclusion. And third, the development of the notion that transitional justice measures are trust-inducing and socially integrative, may offer some lessons worth keeping in mind at this juncture.

2. Truth-telling

Truth commissions, the main vehicle for truth-seeking and truth-telling in the transitional justice field, have accomplished some goals that are relevant to the current context; first, and foremost, and even before anything is said about the narratives they produce, truth commissions have made victims visible, they have given them voice.[56] In many conflict situations, elites, in particular, who always have the possibility of transforming some of their assets and power into security (at the limit, through exit), can think of the conflict as 'victimless,' mainly as threats to economic interests and infrastructure. This, for example, was evident in the case of the Colombian conflict. But there is nothing peculiar to the Colombian case in this respect. Wherever conflict can be kept at bay, for example, contained to rural or marginal areas, urban elites are prone to think mainly about the economic costs of the conflict. Truth commissions, especially those with public hearings and effective dissemination strategies, can bring the impact of the conflict on individuals and communities to the awareness of those that have 'normalized' it. The South African Truth and Reconciliation Commission arguably did this. The TV summaries of the work of the commission had huge audiences in the country, and they removed a veil of ignorance (willfully self-imposed) from the eyes of the white community about the realities of Apartheid.[57] Without public hearings, Argentina's Commission on the Disappeared (CONADEP), produced a report, *Nunca Más*! (*Never Again*!) which was a best seller in the country, excerpted in newspapers, and reprinted severally. Even before the Truth Commission in Colombia finishes its work, the victims' movement has gained a place in the public sphere in the country from which it is difficult to think it will be dislodged.

This sort of recognition, for all the hardship and the frictions it may produce, is an essential part of the recognition of the humanity of the other, in this sense, of the status of victims as rights-holders, that is, as fellow citizens, and consequently, it is an integrative measure. It is a precondition of giving those whose rights have been violated, a reason to think that they are members, in equal standing, of a shared political project.[58]

One of the worst pitfalls of great inequality is that it allows members of different groups—classes, races, religious, and other groups—to live in different realities. Over time, it is difficult for the privileged to understand the indignities to which others are subjected on an everyday basis.[59] The privileged lose all notion of their privilege, and hence, 'deaths of despair,' and the intergenerational effects of hopelessness become nothing more than an abstraction.[60] In contexts that feature some of the inequalities reviewed above, measures to give voice to those that have been 'left behind,' would be important if the inequalities are ever going to be resolved. In some ways, the 'socialization' of *their* reality, is a precondition for the creation of the demand for change.[61]

This double process of giving victims voice, on the one hand, and of holding a mirror to the privileged, on the other, may contribute to undoing the simplifying narratives which McCoy and Somer argue are at the heart of pernicious forms of polarization, narratives that force cross-cutting differences between groups

and force them into an "Us" versus "Them" dynamic. In a sense, truth humanizes by complexifying, and it is in part this liberating process of complexification that allows for a more respectful and consensual form of social integration.

One important dimension of this process has to do with the achievement of a better understanding of the fact that there is something deceptive in the passive voice of the expression 'left behind,' which makes it seem that the fate of those that have been excluded and marginalized is something that simply befell them (or worse, for which they themselves are responsible). Truth-telling measures in such contexts can explain some of the *decisions* that led to particular patterns of distribution of wealth, opportunities, and power. These are not 'facts of nature,' but the result of policy decisions.[62] Think, for example, of processes of de-industrialization, or the (related) adoption of Friedman's notion of 'shareholder value maximization'[63] both of which have arguably been so influential in the rise of the new populism and in generating polarization more generally. It would not be bad for citizens as a whole to gain an understanding of the deliberate nature of this process, for the sake of healthy, transparent politics. Even regarding the management of the pandemic, there is arguably a lot that we still have to understand regarding how, for example, the US federal government, from the President and downwards, exercised their decision-making powers in ways that may have aggravated the crisis and led to notoriously inequitable burdens.

Thus, truth-telling emphasized not only can create a demand for change, but it can also provide *direction* to those changes. In examining patterns of exclusion and of institutional weaknesses, truth-telling can provide some clues about which institutions have been captured, by whom, and for what purposes. This type of analysis can, for example, lead to reforms to strengthen the so called 'guarantor institutions,' oversight mechanisms and independent institutions that help keep constitutional promises and therefore prevent conflict.[64]

Now, of course, in order to avoid naïveté, it is important to mention three caveats, stemming from lessons that have also been learned in the transitional justice field; first, it is a mistake to engage in what some economists and organizational sociologists call 'isomorphic mimicry,' the tendency to think that the very same institutional formation will work equally well regardless of circumstances.[65] So the point here is one on behalf of truth-telling, not necessarily of *truth commissions*. Other mechanisms may be more adequate to the task in the contexts we are worrying about in this paper. Thus, for example, there are institutional truth telling mechanisms, which include the work done by particular German companies to examine their own role in the Holocaust,[66] or the growing number of US universities that are examining their own involvement with slavery.[67] There are also local, official and unofficial truth commissions established in different parts of the world. In Brazil, for instance, the Federal Truth Commission established under the Presidency of Dilma Rousseff, was preceded by or coexisted with more than 20 different local commissions of different types, some of them established by States, others by cities, and even by universities.

In the US, a local, unofficial truth commission was established in 2005 in Greensboro, North Carolina, to examine white supremacist murders in collusion with local authorities in 1979[68] and motivated by the Black Lives Matter movement, more than 50 cities are currently considering doing likewise.[69] Second, the operation of a truth-telling mechanism does not, on its own, lead to a narrative that will be immediately shared by all. Rather than aiming at this as the proximate aim of truth-telling, it is better to think, with Michael Ignatieff, in terms of "limiting the range of permissible lies,"[70] in other words, of establishing some basic facts that any attempt to understand our current situation would have to take into account, and perhaps more importantly, a set of *factors* which cannot be ignored by any serious effort to explain a conflict or the risk of conflict.

Third, and finally, we have learned the obvious lesson that truth is not the same as transformation. Unfortunately, contrary to the lemma of the SATRC, truth, on its own, does not set us free, so it is unlikely that truth, in the absence of other initiatives that can redress the very real problems that polarizing figures latch on to (e.g., de-industrialization, unplanned patterns of migration, high levels of inequality, dysfunctional systems of political representation, captured institutions, various forms of marginalization)

would be sufficient to provoke transformation. And yet, causal insufficiency is not the same thing as causal impotence or irrelevance, so for the reasons stated above, truth-telling may make some contributions in contexts other than their 'natural home,' the post-transitional, post-conflict ones. In fact, various forms of parliamentary commissions of inquiry in non-conflict contexts illustrate the importance of truth for governance in general.[71]

The discussion here merely extends both the range of topics as well as the range of tools that can be employed in pre-conflict contexts. One can imagine truth-telling exercises making a contribution to (eventual) depolarization regarding some of the events that have heightened social divisions in the recent past in non-conflict countries (provided, of course that some of the best practices concerning 'nuts and bolts issues' from the selection of commissioners to methodology, to impartiality are followed).[72] These include Brexit, the unprecedented levels of inequality in some countries, the opiate crisis, deaths of Black people at the hands of the police, the January 6th attack on the Capitol in Washington D.C., to name just a few.

3. Memorialization

Closely associated with truth-telling, and in fact, a crucial tool for the socialization of truth, are different forms of 'memorialization' including the establishment of museums, monuments, days of remembrance, and other such initiatives, for truth commissions and commissions of inquiry reports are rarely the best vehicles for the dissemination and the 'internalization' of truths.

Now, there is no question that in a political context characterized by 'culture wars,' history itself as well as manifestations of varying interpretations of historical events become a major object of contestation. The world, as a recent report in The Economist put it, 'is fixated' on the past, having 'an orgy of reminiscence.'[73] That both socially integrative and socially divisive examples of this fixation on the past can be given raises questions about whether memorialization can be of help under current circumstances, and for the purposes that are of interest to this paper, which are to a large extent integrative and preventive.

The history of the manipulation of history through different means is long and continues into the present. Nazism and communism deployed the past for the sake of political ends. In the Balkans the 'memory' of the losses to the Ottoman Empire (itself long gone and without any present day 'claimants' in the region!) were used to fan 'retaliatory' attitudes that laid the ground for war. Extremist violence in the Muslim world appeals to 'memories' of the Crusades put to instrumental ends. Israel and Palestine are rife with pasts to suit political expedience. The list does not end there. Putin has constructed part of his political appeal around the idea of recovering for Russia the respect the Soviet Union had as a superpower, China uses the memory of the 'century of humiliation' as a unifying narrative, and most recently, in the US, former President Trump appointed the 1776 commission (without a single historian) as a response to the 1619 Project, which looked at American history through the prism of slavery.[74] In this sense, it is not surprising that even seasoned correspondents like David Rieff end up writing books like *Against Remembrance*[75] and In *Praise of Forgetting*.[76]

There is therefore no question that 'historical memory' (an oxymoronic expression that should not be used in serious discussions[77]) can be instrumentalized and used both to stoke divisions and, as it is happening in the US and elsewhere, often to "help to distract from questions of material distribution," turning this part of the 'culture wars' into what Jan-Werner Müller calls an 'elite device' for those who want to continue pursuing a neoliberal economic agenda.[78]

And yet, there is something substantive about memorialization, which explains why a country like Spain, for example, is currently debating what it calls a 'democratic memory' law,[79] which includes dispositions about street names, monuments, and, importantly, the *Valle de los Caídos*, the cavernous monument to 'reconciliation' designed by Franco and constructed with forced labor, where 30,000 victims of the civil war were buried (the Republican victims were interred there without consulting their families).[80] More than eighty years after the civil war finished and more than forty-five since the transition to democracy,

family members of Republican victims continue a struggle for recognition, widely understood: recognition of the fact that those who fought the war or were convicted during the dictatorship were not criminals; of the fact that they deserve the same types of reparations as were offered to nationalist soldiers and their families; of the illegitimacy of their sentences and convictions; of the various harms they suffered, including expropriations, fines, loss of employment, pensions, etc. Some of these aims are more tangible than others. In a country with more unrecovered remains than any other in Europe (including, for example, more than the scenario of the latest Western European conflict, the Balkans), people want remains to be exhumed and given proper burial; but they also want the stories of their family members not to be forgotten. And they particularly resent the fact that despite the 2007 law, there are still street names and symbols in public spaces that glorify the victors, and that the decades of teaching the history of the war as if it had been everywhere a "fratricidal struggle" between two rival factions who shared responsibility (an obvious distortion of a conflict that started with a military insurrection against a legally constituted government, and in which there were plenty of provinces where massacres and executions took place without any organized opposition) was, not surprisingly, extraordinarily effective, and so is still the dominant view.[81] There is of course nothing peculiar about Spain's interest in memorialization.

Following the murder of George Floyd in the US, a large number of monuments associated with racism, slavery, and colonialism, have been either toppled by crowds or ordered removed by local governments or by institutional authorities, for example in universities. Remarkably, this trend was not limited to the US (as unlikely as this was in places such as Louisiana, South Carolina, and Virginia), so statues were also toppled in the UK, South Africa, Peru, and Colombia, and removed in Belgium, among many other countries.[82] The trend continues to this day, both in the US[83] as well as abroad. By February 2021, more than 100 confederate statues had been removed in the US and as I write this, Mexico City is planning to replace a statute of Columbus in one of the city's major throughfares by a statute of an indigenous woman.[84]

So, despite all the manipulation, opportunism, and lack of reflexivity in 'memory work,' including memorialization, it continues to be important. Susan Neiman articulates the reason why persuasively in relating it to values. "Monuments," she says, are values made visible. They embody the ideals we choose to honor, in the hopes of reminding ourselves and our children that these ideals were actually embodied by brave men and women. What is at stake is not the past, but the present and future. When we choose to memorialize a historical moment, we are choosing the values we want to defend, and pass on.[85]

And this is why, she argues, there are no Nazi monuments in Germany: "A hypothetical Germany still valorizing soldiers who served a murderous cause would have failed to reject the cause itself."[86] This is essentially the same argument made by Mitch Landrieu, former mayor of New Orleans (2010-18) at the speech explaining the removal of the four confederate statues in the city: First, he affirms "[t]hese statues are not just stone and metal. They're not just innocent remembrances of a benign history. These monuments celebrate a fictional, sanitized Confederacy: ignoring the death, ignoring the enslavement, ignoring the terror that it actually stood for." Then he asks his audience to consider these four monuments from the perspective of an African American mother or father trying to explain to their fifth-grade daughter why Robert E. Lee sat atop our city.

> Can you do it? Can you do it? Can you look into the eyes of this young girl and convince her that Robert E. Lee is there to encourage her? Do you think she feels inspired and hopeful by that story? Do these monuments help her see her future with limitless potential? Have you ever thought that if her potential is limited, yours and my potential [is limited] as well?[87]

So, memorialization can be preventive precisely because it is not mainly concerned about the past, but about the values that we expect to be relevant in the present and the future. The antidote to the "unreliability" of acts of remembrance, to the fact that memory can be used for divisive purpose, is not to do away with the concern for the past—as if that were possible—but to make sure that the accounts of the past that are taken to be authoritative are both veridical and comprehensive, and that the disposition of memorials also obey some form of 'distributive justice in recognition.'[88] It goes without saying that there is

no complete account of the past, one that embodies *all* and *only* true facts. And in terms of monuments, there is of course no public space that can bear setting in stone each and every past misdeed. What is called for are accounts of the past that are sufficient to set inquiry in directions that have been previously kept hidden and memorials that offer sufficient recognition to previously unrecognized groups.

Recalling that what is at stake here is not memory but the *public acknowledgment* of great violations of rights, or, in the pre-conflict contexts, the public acknowledgment of great harms, a refusal to acknowledge them, to give them a place in our public space, involves a value judgment that there is no way to spin without demeaning the value of the victims or the importance of rights—not just the rights of victims but rights in general, for the value of the notion these days rests to a large extent on their generalizability. To the extent that we expect others to be part of a shared political community, we owe them sufficient recognition for them to take the project to be truly shared. This is very clear in the case of our fellow citizens. "Fellow citizens," however, does not refer to our compatriots only or those with whom we share a nationality. We are today fellow citizens of a community of rights. To the extent that we expect others to trust us in that capacity, we have the duty to remember everything that we cannot reasonably expect our fellow citizens to forget.

Countries that have succeeded in using memorialization as an instrument of social integration have succeeded to the extent that the memorialization activities are not simply the representation of the memory of the victors; that they promote democratic values (which the classical model that concentrates almost exclusively on 'great' military men does not); that they are conceived not merely as static objects but designed as 'living' objects. The lessons that have been learned about how to achieve such aims highlight the importance of participatory methods in the design and implementation of memorialization activities, the importance of diversifying media, going well beyond stone and steel only, and, moreover, the importance of linking the memorialization activities to other policy interventions that address directly the relevant grievances, for memorialization cannot replace policy initiatives, although it can motivate them, support them, and even provide some guidance to them.[89]

4. Apologies

Another kind of initiative that often accompanies the implementation of transitional justice policies and which is worth considering in the present context is an official apology. The study of official apologies has grown significantly since the late 90's, despite the fact that official apologies have a long history indeed.[90] One can study apologies as speech acts and argue that, leaving conditions of success aside, something is an apology if and only if it accepts responsibility and expresses regret.[91] This minimalist understanding of the semantics of apologies can be elaborated in detail (thus, for example, Nick Smith's account of 'categorical apologies' includes a corroborated factual record, and indeed, the identification of each harm and of the moral principles underlying each harm, acceptance of blame, categorical regret with the attendant emotions, among other factors[92]). If one is concerned not just with the semantics of apologies, but with their conditions of success, it is undeniable that such an expression is more likely to be accepted if it is accompanied by some of the other items in the many lists of elements of apologies, including, for example, the "performance of penance,"[93] the "express[ion] of concern for future good relations,"[94] and most of all, the offer of repair.[95]

That some apologies, even public, collective ones, can have profound effects there can be no doubt. Perhaps a good illustration is one that is not even verbal, Willy Brandt's kneeling in front of Warsaw's Monument to the Ghetto Heroes in 1970, during the first visit by a German Chancellor to Poland, countries that had suspended diplomatic relations since the end of the Second World War. The gesture, on most accounts, spontaneous, conveyed unconditional regret and acceptance of responsibility. It also signaled to the international community an image of a peace-seeking Germany.[96]

When Australian Prime Minister Kevin Rudd apologized for the mistreatment of Aboriginal and Torres Strait Islander peoples in 2008,[97] several members of these communities experienced this moment as a real breakthrough, with a member of the 'stolen generation'—Aboriginal children who were removed from their families and raised in white homes—saying exactly what makes the exercise we are engaged in, examining whether transitional justice may have anything to offer in pre- or non-conflict contexts worthwhile: "It gave me peace."[98]

The interesting question for us is whether an account of such an effect, not so much at the individual, micro, level, but at the societal, macro level, can be offered. The literature on apologies centers around two leading views. The first one concentrates on the fact that apologies involve an exchange of power. Aaron Lazare gives a succinct expression of this view:[99]

> [W]hat makes an apology work is the exchange of shame and power between the offender and the offended. By apologizing, you take the shame of your offense and redirect it to yourself. You admit of hurting or diminishing someone, and, in effect, say that you are really the one who is diminished—I'm the one who was wrong, mistaken, insensitive, or stupid. In acknowledging your shame you give the offender the power to forgive. The exchange is at the heart of the healing process.[100]

On this view, what is important is not only the redirection of shame in its own terms, but one of its consequences, namely, the fact that it puts the offender in a position of vulnerability, and therefore redraws the balance of power with the offended, who is now able to either grant or withhold something the offender wants, the release that comes through forgiveness:

> Originally having had the power to hurt, the offender now gives the power to forgive or not to forgive to the offended party. This exchange of humiliation and power between the offender and the offended may be the clearest way of explaining how some apologies heal by restoring dignity and self-respect.[101]

While I do not doubt that there are some circumstances—especially face-to-face apologies—which are fittingly described in these terms, to make an exchange of *power* the cornerstone of an explanatory account of how apologies work seems to me to stretch credibility a bit. Although it is difficult to be certain of what a successful apology is, I am not sure that Queen Elizabeth's apology to the Maoris in New Zealand,[102] or President Clinton's apologies to the victims of the Tuskegee experiments,[103] or—to include non-State apologies—Texaco's chairman's apology for racial slurs,[104] to mention just a few instances, are best described in terms of a redrawing of the balance of power between the offender and the offended.[105] There are two reasons why I think that this account overestimates the significance of a power shift between the parties.

First, it is not clear that an apology actually has as its end result the redrawing, to any important degree, of the balance of power between the relevant parties. This is particularly important in the case of institutional, official apologies, where the relationship between the offender and the offended is frequently asymmetrical (as in the three examples mentioned above). Second, even if one sets aside the question of the effects of the apology and concentrates on what the account considers to be the relevant exchange—an apology for release—many of these instances may constitute examples of an offer one cannot refuse, if for no other reason that the apologies might be the only gesture on offer. If this is so, there are reasons to question the moral significance of the exchange.

The second account of how apologies work, rather than concentrating on the exchange of power, focuses on the fact that apologies are unthinkable in the absence of norms and values whose validity—despite the transgression—is reaffirmed in the act of apologizing. This is a view that can be constructed on the basis of Tavuchis' sociological approach to apologies in his *Mea Culpa* (although he does not offer an explanatory account of their effectiveness). Tavuchis argues in the introduction to his book that in examining a wide variety of apologies, the discernible common theme he found was "the violation of an unstated but consequential, moral rule."[106] I find the reference to specifically moral rules unduly constraining, and Tavuchis himself eventually broadens the scope of his attention; but, in my view, focusing on the fact that apologies reaffirm norms and values is fundamentally correct. In the most elaborate statement of this point

in his book, Tavuchis writes:

> Genuine apologies…may be taken as the symbolic foci of secular remedial rituals that serve to recall and reaffirm allegiance to codes of behavior and belief whose integrity has been tested and challenged by transgression, whether knowingly or unwittingly. An apology thus speaks to an act that cannot be undone but that cannot go unnoticed without compromising the current and future relationship of the parties, the legitimacy of the violated rule, and the wider social web in which the participants are enmeshed.[107]

The point that I want to make is not only that conceptually speaking an apology is unthinkable in the absence of a norm that the offender considers to be binding—and that is typically, although not always, shared with the offended—but that the reason why an apology may be thought to 'work' is that it involves the affirmation of the validity of the norm. (Here again, one must avoid naïveté: the affirmation of a norm is never simply a matter of words or gestures: Chancellor Brandt's genuflection had the effect it did in the context of a trip designed to restore diplomatic relations with Poland, which involved, for example, German recognition of the Oder-Neisse Line as the border with Poland, and all of this, within the framework of Brandt's promotion of his *Ostpolitik* a policy of engagement with the Soviet Union and the countries in Eastern Europe; Prime Minister Rudd's apology to the aborigines and Torres Strait Islander peoples was received in the way it was in part because it was accompanied by the adoption of the 'Closing the Gap' program, which was supposed to redress the inequalities suffered especially by members of the 'stolen generation.'[108] But as Stoltz and Van Shaack put it, after ten years, "the lack of concrete policy changes following Rudd's apology, especially the failure to meet so many imperative Closing-the-Gap goals, leaves many with the impression that the apology was more of a political stunt to provide artificial closure than a *bona fide* process to usher in transformative change."[109] Norms, and the recovery of their *validity* or currency as the 'guardrails' of social relations, are critical for trust, as I will argue, and all the measures we are considering in this paper (truth-telling, memorialization, apologies, consultations, etc.), 'work,' to the extent they do, in virtue of their norm-affirming character. Social integration, from this point of view, is an achievement that depends on the ability of a group to live by norms that all can accept.[110]

5. Consultation and Participation

National consultation processes are not necessarily a transitional justice measure, but many transitional countries have engaged in various modalities of such processes, with varying degrees of success. Some of these processes are explicitly designed to lead to a new or reformed constitution, some of them have vague, undefined goals:

> National Dialogues are nationally owned political processes aimed at generating consensus among a broad range of national stakeholders in times of deep political crisis, in post-war situations or during far-reaching political transitions. Depending on the context, National Dialogues can be employed as mechanisms for (a) **crisis prevention and management**, a shorter-term endeavour, undertaken strategically as a means to resolve or prevent the outbreak of armed violence, breaking political deadlocks and re-establishing minimal political consensus…; or (b) **fundamental change, with a longer-term trajectory**, envisioned as a means to redefine state-society relations, or establish a new 'social contract' through institutional and constitutional changes…[111]

There is a much longer tradition of national dialogues (especially in the Francophone world) than one would guess from the meager literature on the topic. National dialogues have acquired more visibility of late in large part thanks to the Nobel Peace Prize awarded in 2015 to the Tunisian quartet du dialogue national in virtue of its contribution to that country's constitution-making process.[112] In the West, Emmanuel Macron's 'grand national dialogue' as a response to the demonstrations by the *gilets jaunes* ('yellow vests') starting in November 2018 also brought attention to national dialogues, although the results of this exercise were significantly more ambiguous than the Tunisian example.

Here again I think it is important to avoid naïveté. As one of the very few comparative analyses of national dialogues points out, "While most National Dialogues reached an agreement, only half of these agreements were implemented." The same study acknowledges that "National Dialogues have often been used by national elites as a tool to gain or reclaim political legitimacy, which has limited their potential for transformative change."[113] So national dialogues are far from a panacea.

Having said this, in addition to the fact that the cited comparative study also mentions that "[i]n the short term, and most notably in cases of mass protests, National Dialogues have been able to reduce violence by transferring grievances from the streets into formalized processes."[114] In my opinion it is a mistake to judge the success or failure of national dialogues or consultation processes on the basis of short-term transformations. Participatory methods, in general, are usually defended in terms of two types of argument. The first, 'epistemic' argument refers to the type of knowledge or insight consulting people may produce, and on the positive consequences that improvements in understanding may have. On this account, consultations can: increase the likelihood that reform proposals capture the sense of justice of victims and other beneficiaries, and their judgments of what would constitute effective redress; help ensure a close fit between the to-be-designed measures and expressed needs of victims on the one hand, and important contextual factors such as cultural, historical, and political realities, on the other; and broaden the range of adequate alternatives as more ideas for effective redress are put on the table.

The second type of argument in defense of participation generally and of consultations more specifically are 'legitimacy' arguments. On this account, consultations are important not just because of the specific contributions that canvassing opinions may have, measured in terms of 'proposals,' but rather, because the process of consulting is itself a measure of recognition to, and empowerment of, victims and helps them gain a place in the public sphere which may have been denied to them before; similarly, consultation processes may widen the circle of stakeholders in justice processes, pulling into the discussions both official and unofficial groups previously not included, on whose consent and participation the success and sustainability of reform proposals may depend to some extent; and finally, consultations may facilitate the identification of commonalities of experiences, values, and principles, between different groups, which is important for the sake of coalition- and consensus-formation and crucial in the adoption of policies about contentious issues.[115]

So, once again, the common theme is about the contribution of these methods to a sense of social integration. Regarding national consultations, I would like to stress the point that beyond immediate results, the very exercise of identifying constituencies that have traditionally been excluded from conversations about an inevitably shared destiny, is both a means of recognition and a contribution to raising effective claims for transformation, including redistribution. The national consultation process in Colombia, during the peace negotiation, for example, in addition to victims, identified eighteen categories of groups whose participation they tried to secure.

These included peasants' movements; indigenous populations; Afro-descendant populations; labor and business organizations; trade unions; political parties; human rights organizations; development and peace programs; churches; academia; children and adolescents; youth organizations; LGBTQIA+ organizations; minority communities (Palenqueros, Raizales and Roma); environmental organizations; and the media. Gender and regional considerations were also applied across the different categories, aiming for a 50% female representation and significant participation by people from different regions (an aim also served by the decision concerning the location of the consultations). Similarly, for the consultations in Burundi (2009-10), efforts were also made to promote the participation of specific groups including public officials, government representatives, parliamentarians, political representatives, civil society organizations, women's groups, academics, journalists, elderly and youth organizations, persons with disabilities, churches and religious communities, displaced persons, demobilized persons, former child soldiers, widows and orphans, among others, and sampling methods were used to equalize the chances of participation of members of different ethnic groups. In other words, far from the typical convenings in notoriously centralized, stratified, and exclusionary societies.[116]

In a context characterized by increasing fragmentation, the autonomation of the political class from their supposed constituencies, and therefore, by deep distrust in familiar methods of representation, it may be that consultations of this inclusive type can make a contribution to, at the very least, establishing a forum where people can recognize each other. So, while there is nothing that can guarantee that their promise will be fulfilled, we now need modes of reconnection, and national dialogues and consultation processes offer not just a forum, but one that is convened at a particular moment: "National Dialogues are typically convened at times when the fundamental nature or survival of a government is in question. Thus, they are usually intended as a means of redefining the relationship between the state, political actors, and society through the negotiation of a new social contract."[117] Opportunities to 'de-naturalize' the status quo come only seldomly. It would not be bad to take those opportunities and exploit whatever potential they have.

6. Enhancing Trust

Trust, or more exactly, the erosion of trust, played an important part of the characterization of the domain of concern of this paper. It is therefore fitting to close with some considerations about the notion, stemming from lessons learned in the field of transitional justice. It is clear that post-authoritarian and post-conflict societies are left with profound deficits of trust, and the theoretical reconstruction of the aims of transitional justice includes the claim that one of the reasons it makes sense to think about transitional justice wholistically is that all of the elements of a comprehensive transitional justice policy share as a (mediate) aim strengthening civic trust.[118]

I made in the preceding much of the fact that the burgeoning literature on trust, particularly that which is survey-based, does not offer a definition of trust at all. Here I want to address this issue head on, for it seems to me that without a clear idea of what we are seeking to accomplish, our interventions will be nothing more than 'shots in the dark.'

The argument concerning the trust-inducing potential of transitional justice measure must start with what again can only be a stipulation, namely that trust should not be reduced to mere empirical predictability: that reliability is not the same as trustworthiness can be seen in our reluctance to say that we *trust* someone about whose behavior we feel a great deal of certainty but only because we both monitor and control it (e.g., through enforcing the terms of a contract), or because we take defensive or preemptive action.[119] Trust, far from resembling a sort of 'mechanical reliability,' involves an expectation of a shared normative commitment. I trust someone when I have reasons to expect a certain pattern of behavior from her, and those reasons include not just her consistent past behavior, but also, crucially, the expectation that among her reasons for action is the commitment to the norms and values we share.

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. As Claus Offe puts it:

> "Trusting institutions" means something entirely different from "trusting my neighbor": it means *knowing* and recognizing as valid the values and the form of life incorporated in an institution and deriving from this recognition the assumption that this idea makes sufficient sense to a sufficient number of people to motivate their ongoing active support for the institution and the compliance with its rules. Successful institutions generate a positive feedback loop: they make sense to actors so that actors will support them and comply with what the institutionally defined order prescribes.[120]

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, norms that precisely turn natural persons into rights-bearers. 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. 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. 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. 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.

Much more important for purposes of this paper than the details of how transitional justice measures promote civic trust is the core idea that trust is a *normative* conception, that in the end it involves the possibility of shared normative commitments.[121] This helps, in my view, for it clarifies both the challenges and the opportunities: on the one hand, if trust cannot be reduced to predictability, but involves normative commitments, there are no quick fixes, no technocratic solutions to trust deficits, this is not something that can be resolved by fiat. We all know the old adage, 'trust takes ages to construct, a second to shatter.' The underlying reasons should be apparent: *alter's* commitment to norms is something that we cannot observe directly, but only 'read off' long patterns of consistent behavior (hence its brittleness also: a norm-breaking act on his part makes us question at the very least the strength of that commitment). On the other hand, keeping in mind that civic trust is not the same as trust between intimates, but that the relevant *shared* norms are abstract and general (for example, constitutional principles, human rights), makes the challenge one that can actually be met. Complying with norms of this level of generality is presumably less demanding than meeting the far more fine-grained norms that govern the expectations between intimates. With more than a little irony, one can say the task is easy; we just need to make sure that we establish conditions for the achievement of 'participatory parity,' which as Fraser argues involves *both* recognition and redistribution.[122]

Endnotes

1 Nancy Fraser has long insisted on the importance of both recognition and redistribution. See her parts of Nancy Fraser and Axel Honneth *Redistribution or Recognition?* (London: Verso, 2003) and her shorter *The Old is Dying and the New Cannot be Born* (London: Verso, 2019).

2 If 'conflict' is itself the subject of definitional quandaries (see, e.g., "How is the Term 'Armed Conflict' Defined in International Humanitarian Law?", International Committee of the Red Cross, Opinion Paper, March 2008), 'pre-conflict and non-conflict settings' lack any agreed upon definition. So let me stipulate: the paper is interested in the utility of transitional justice measures in situations of increased polarization, declining institutional trust, political disaffection and logjams, phenomena that are observable frequently nowadays in very diverse countries, some of which may have unredressed 'historical injustices' in their past (e.g., the United States), but some of them not, or at least not of the sort that are the cause of the polarization, declining trust, etc. in any mediate or immediate sense (e.g., Brazil, Spain, France, Sweden, Chile, etc.)

3 "Articulating the Links between Transitional Justice and Development: Justice and Social Integration," in *Transitional Justice and Development: Making Connections*, Pablo de Greiff and Roger Duthie, eds., (New York: Social Science Research Council, 2009).

4 The qualifiers 'immediate,' 'mediate,' and 'final' above do not refer to temporal proximity but to causal sufficiency or insufficiency. Thus, the point is not that TJ measures, *on their own*, can produce trust or social integration, but that they are one of the factors that promote those desirable ends. See "Theorizing Transitional Justice," in Transitional Justice, Melissa Williams, Rosemary Nagy, and Jon Elster, eds. NOMOS, vol. LI (New York: New York University Press, 2012), which is a systematic attempt to justify the claim that transitional justice should be conceived as a comprehensive policy, that is, holistically—a claim that is already present in the UN Secretary General's 2004 Report on Transitional Justice and the Rule of Law (S/2004/616).

5 For some of the challenges that this transposition of the model from post-authoritarian to weakly institutionalized post-conflict contexts involves, see Human Rights Council report, "Transitional Justice in Weakly Institutionalized Post-conflict States," A/HRC/36/50. Available at https://undocs.org/en/A/HRC/36/50.

6 Huntington, Samuel, The Third Wave (Norman, OK: University of Oklahoma Press, 1991).

7 Roht-Arriaza, Naomi, The Pinochet Effect (Philadelphia: University of Pennsylvania Press, 2005). Arguably, Pinochet lost more support when it was revealed that he had bank accounts abroad whose proceeds could not be easily explained, than by all the revelations of human rights abuses.

8 Sartori, Giovanni, Party and Party System (Cambridge: Cambridge University Press, 1976).

9 Algan, Yann et. al., "The European Trust Crisis and the Rise in Populism," *Brookings Papers on Economic Activities* (2017): 310-400, where the authors state: "We document that rising voting shares for antiestablishment, especially populist, parties follow increases in unemployment. It is the change in unemployment—rather than its level—that correlates with voting for nonmainstream parties; this novel—to the best of our knowledge—result echoes the findings of the literature on the role of economic losses in self-reported well-being and happiness." p. 312. See also Manuel Funke, et. al., "Going to Extremes: Politics after Financial Crises, 1870–2014." *European Economic Review* 88: 227–60., who, studying 20 advanced economies over the years 1870–2014, document that financial crises increase political polarization, raise fragmentation in the parliament, and spur political unrest.

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14 "Partisan Polarization Surges in Bush, Obama Years," *Pew Research Center*, June 4, 2012, https://www.pewresearch.org/politics/2012/06/04/partisan-polarization-surges-in-bush-obama-years/.

15 "Partisan Polarization in the American Public," *Pew Research Center*, June 4, 2012, https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/.

16 "A Divided and Pessimistic Electorate, "*Pew Research Center,* November 10, 2016, https://www.pewresearch.org/politics/2016/11/10/a-divided-and-pessimistic-electorate/.

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Pew Research Center, January 29, 2021, https://www.pewresearch.org/2021/01/29/how-america-changed-during-donald-trumps-presidency/#fn-383636-1.

18 Dimock, Michael and John Gramlich, "How America Changed during Donald Trump's Presidency," *Pew Research Center*, January 29, 2021, https://www.pewresearch.org/2021/01/29/how-america-changed-during-donald-trumps-presidency/#fnref-383636-2.

19 Putnam, Robert D., *The Upswing. How America Came Together a Century Ago and How we Can Do It Again*, (New York: Simon and Schuster, 2020). Figure at p. 70.

20 "2020 election reveals two broad voting coalitions fundamentally at odds," *Pew Research Center*, November 6, 2020, https://www.pewresearch.org/fact-tank/2020/11/06/2020-election-reveals-two-broad-voting-coalitions-fundamentally-at-odds.

21 "Amid Campaign Turmoil, Biden Holds Wide Leads on Coronavirus, Unifying the Country," *Pew Research Center*, October 9, 2020, https://www.pewresearch.org/politics/2020/10/09/amid-campaign-turmoil-biden-holds-wide-leads-on-coronavirus-unifying-the-country.

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24 Judis, John B., *The Politics of our Time: Populism, Nationalism, Socialism* (New York: Columbia Global Reports, 2021), p. 114.

25 Ibid., p. 120.

26 Ibid., pP. 120-21.

27 Luedtke, Adam, "Fortifying Fortress Europe? The Effect of September 11 on EU Immigration Policy." In T.E. Givens, G.P. Freeman, and D.L. Leal (eds.) *Immigration Policy and Security: U.S., European and Commonwealth Perspectives* (New York: Routledge, 2007), pp. 130–47.

28 Comparing the period 1950 to 1973 with the period from 1973 to 1995, "France's average rate of growth fell from 5.1 to 2.7 percent, Germany's from 6.0 to 2.7 percent; and Sweden's from 4.1 to 1.5 percent. During the 1960's unemployment in Western Europe averaged a lowly 1.6 percent. By the end of the 1970's unemployment rose to more than 7 percent." Judis, *The Politics of our Time*, p. 115.

29 Algan, Yann et. al., "The European Trust Crisis and the Rise in Populism," and the references therein.

30 Collier, Paul, Exodus. *Immigration and Multiculturalism* in the 21st Century (London: Penguin Books, 2013), esp. chs. 2 and 5.

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32 Kohut, Andrew and Richard Wike, "Xenophobia on the Continent" *National Interest*, October 2008, available at: https://nationalinterest.org/article/xenophobia-on-the-continent-2904.

33 Picheta, Rob and Henrik Pettersson "American police shoot, kill and imprison more people than other high-income countries. Here's the data," *CNN*, June 8, 2020, https://www.cnn.com/2020/06/08/us/us-police-floyd-protests-country-comparisons-intl/index.html.

34 Singh, Inayat, "2020 already a particularly deadly year for people killed in police encounters," *CBC News*, July 23, 2020, https://newsinteractives.cbc.ca/fatalpoliceencounters/.

35 "Twelve Charts on Race and Racism in Australia," *The Conversation*, November 27, 2018. https://theconversation.com/twelve-charts-on-race-and-racism-in-australia-105961.

36 Quarcoo, Asley, "Global Democracy Supporters Must Confront Systemic Racism," *Carnegie Endowment*, July 15, 2020, https://carnegieendowment.org/2020/07/15/global-democracy-supporters-must-confront-system-

ic-racism-pub-82298.

37 "Being Black in the EU," *Europa FRA* November 2018, https://fra.europa.eu/en/publication/2018/being-black-eu.

38 Quarcoo, "Global Democracy Supporters Must Confront Systemic Racism."

39 There has been a decline in people who say that a majority-minority country in the next 25-30 years is bad for the country. In 2020, "64% of U.S. adults say the prospect of a nation in the next 25 to 30 years in which Black Americans, Latinos and Asian Americans make up a majority of the population is neither good nor bad for the country. Nearly a quarter (24%) say this is a good thing, while fewer than half as many (11%) say it is bad… While Republicans are more likely than Democrats to say this change would be bad for the country (19% of Republicans vs. 4% of Democrats), the share of Republicans who express this view has declined by 20 points since 2016." See https://www.pewresearch.org/fact-tank/2020/10/01/americans-are-more-positive-about-the-long-term-rise-in-u-s-racial-and-ethnic-diversity-than-in-2016/; Furthermore, up to two thirds of Americans say that they support the Black Lives Matter Movement (see https://www.pewresearch.org/social-trends/2020/06/12/amid-protests-majorities-across-racial-and-ethnic-groups-express-support-for-the-black-lives-matter-movement/#fnref-28672-1) and beyond surveys, as the title of an interactive New York Times article puts it, "Black Lives Matter May be the Largest Movement in US History," with protests occurring in all states, more than 2000 localities, and involving up to 10 percent of the US population (notoriously demobilized since the late 60's and early 70's). See https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html.

40 Pew Research Center, "In a Politically Polarized Era, Sharp Divides in Both Partisan Coalitions," *Pew Research Center*, December 2019, Section 4, "Views on Race and Immigration," pp. 51-62, https://www.pewresearch.org/politics/2019/12/17/views-on-race-and-immigration/.

41 Cliffe, Sarah and Paul von Chamier, "Restoring Civic Trust in the Post-Pandemic Era," *NYU Center on International Cooperation*, May 5, 2021, https://cic.nyu.edu/publications/restoring-civic-trust-post-pandemic-era.

42 For some of the methodological debates, see, Paul C. Bauer and Markus Freitag, "Measuring Trust," *The Oxford Handbook of Social and Political Trust*, Eric M. Uslaner, Ed., (Oxford: Oxford University Press, 2018).

43 Rosenberg, Morris, "Misanthropy and political ideology," *American Sociological Review* (1956) 21(6): 690–695, https://www.jstor.org/stable/2088419.

44 The question has been the subject of much debate, not only for the lack of definition of the critical term 'trust,' but also of the term 'most people,' the referent of which can range from people in the local community to various other groups, including people in certain institutional categories, to people in the nation –or even the world at large. Cf. e.g., A. S. Miller., and T. Mitamura, "*Are surveys on trust trustworthy? Social Psychology Quarterly* (2003), 66(1): 62–70. E.L. Glaeser, et. al., "Measuring trust," *Quarterly Journal of Economics* (2000), 115(3), 811–846. Furthermore, the 'caution rider' (underlined)--most people can be trusted, or that *you can't be too careful in dealing with people*?—has been shown to lead to lower scores particularly by minorities and women. Cf., Fabrice Murtin et. al., "Trust and its Determinants," *OECD Statistics Working Papers*, No. 89, (2018), p. 21.

45 "Average rating of trust by domain, sex, age and educational attainment level," *eurostat*, last updated August 2, 2021, https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_pw03&lang=en.

46 See, e.g., Ronald Inglehart's reflections on cultural change after running the World Values Survey for longer than anyone else, before his recent death in *Cultural Evolution* (Cambridge: Cambridge University Press, 2018).

47 The question is part of a set that includes also: **Government Attention** – Over the years, how much attention do you feel the government pays to what people think when it decides what to do – a good deal, some, or not much? Faith in Parties – How much do you feel that political parties help to make the government pay attention to what the people think – a good deal, some, or not much? **Faith in Elections** – How much do you feel that having elections makes the government pay attention to what the people think – a good deal, some, or not much? **Government Waste** – Do you think that people in government waste a lot of the money we pay in taxes, waste some of it, or don't waste very much of it? **Big Interests** – Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people? Crooked Politicians – Do you think that quite a few of the people running the government are crooked, not very many are, or do you think hardly any of them are crooked?

48 "Trust in government," *OECD Data*, https://data.oecd.org/gga/trust-in-government.htm.

49 Lee, Yunsoo, "The Great Recession, Government Performance, and Citizen Trust," *Journal of International and Area Studies*, (2018), 25(1):55-70, https://www.jstor.org/stable/26485930.

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Angell, "Public Opinion, Trust, and the COVID-19 Pandemic," *NYU Center on International Cooperation*, May 19, https://cic.nyu.edu/publications/public-opinion-trust-and-the-covid-19-pandemic..

51 "How's Life? 2020: Measuring Well-being," OECD, 2020, https://www.oecd-ilibrary.org/sites/9870c393-en/1/3/16/index.html?itemId=/content/publication/9870c393-en&_csp_=fab41822851fa020ad60bb57b-b82180a&itemIGO=oecd&itemContentType=book#section-d1e22165.

52 "Public Trust in Government: 1958-2021," *Pew Research Center*, May 17, 2021, https://www.pewresearch.org/politics/2021/05/17/public-trust-in-government-1958-2021/.

53 McCoy, Rahman, and Sommer, "Polarization and the Global Crisis of Democracy," op. cit. p. 18.

54 Ibid., 26.

55 I do not mean to elide the difficulties that truth telling mechanisms will now face in an environment rife with social media spread disinformation, a challenge that former truth commissions, for example, were spared.

56 "On Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes," in Clara Ramírez Barat, ed., *Transitional Justice, Culture, and Society: Beyond Outreach* (New York: SSRC, 2014).

57 See, e.g., Catherine M. Cole, "Reverberations of Testimony: South Africa's Truth and Reconciliation Commission in Art and Media," in Ramírez Barat, ed., *Transitional Justice*, Culture, and Society.

58 Here it is worth quoting Nancy Fraser, whose framework is fundamental to the CIC project: "To view recognition as a matter of justice is to treat it as an issue of social status. This means examining institutionalized patterns of cultural value for their effects on the relative standing of social actors. If and when such patterns constitute actors as peers, capable of participating on a par with one another in social life, then we can speak of *reciprocal recognition and status equality*. When, in contrast, institutionalized patterns of cultural value constitute some actors as inferior, excluded, wholly other, or simply invisible, hence as less than full partners in social interaction, then we should speak of *misrecognition and status subordination*." Fraser, *Redistribution or Recognition?* p. 29.

59 Sennet, Richard and Jonathan Cobb, *The Hidden Injuries of Class* (New York, Norton: 1972) and Sennet's follow up, *The Erosion of Character. The Personal Consequences of Work in the New Capitalism* (New York: Norton: 2000), the former following the life of a unionized janitor, the latter the life of his son, part of the 'precariat.' Even though the latter book is 'dated' –the son had all the uncertainties that accompany jobs in the new economy, but he was still earning more than his father, something that especially after 2008 is the exception, rather than the rule—the two books still offer deep insights into class differences. See also, Joan C. Williams, "What So Many People Don't Get About the U.S. Working Class" *Harvard Business Review*, November 12, 2016, https://hbr.org/2016/11/what-so-many-people-dont-get-about-the-u-s-working-class.

60 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 Development Report 2006: Equity and Development* (Washington, DC: World Bank 2006), chap. 2, esp. 48ff.), one of the intergenerational effects of hopelessness and fear. People adjust their preferences in light of considerations of feasibility in order to avoid suffering permanently defeated expectations, leading to what Arjun Appadurai, in talking about deep poverty calls the stunting of "the capacity to aspire." This mechanism operates even in economically prosperous countries, particularly among those affected by structural, "horizontal inequalities," which play such a central role in the UN-WB Pathways to Peace. See Arjun Appadurai, "The Capacity to Aspire: Culture and the Terms of Recognition," in *Culture and Public Action*, ed. Vijayendra Rao and Michael Walton (Stanford: Stanford University Press, 2004), 68. See also Amartya Sen, "How Does Culture Matter?" in the same collection. On shifting preferences see, e.g., Robert Goodin, "Laundering Preferences," in Foundations of Social Choice Theory, ed. Jon Elster and Aanund Hylland (Cambridge: Cambridge University Press, 1986); and Cass Sunstein, "Democracy and Shifting Preferences," in T*he Good Polity: Normative Analysis of the State*, ed. Allan Hamlin and Phillip Pettit (Oxford: Polity Press, 1989). For the notion of horizontal inequalities, see Frances Stewart, ed., *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies* (Basingstoke: Palgrave, 2008). For the intergenerational effects of different types of trauma, in general, see, Yael Danieli, ed., *International Handbook of Multigenerational Legacies of Trauma* (New York: Springer, 2010).

61 For a revealing expression of the type of lack of awareness of privilege, see the headline in the *Financial Times* of May 27, 2021: "Worker shortages raise fears of higher wage costs in high-income economies." Clearly neither the author nor the editor asked the basic question, higher wages raise fears in whom? Obviously, not the workers…

62 See, e.g., Stephen Holmes and Cass Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York: Norton, 2000); Michael Sandel, *The Tyranny of Merit. What Became of the Common Good?* (New York: Farrar, Straus and Giroux, 2020); Paul Collier, The Future of Capitalism (New York: Harper, 2018).

63 Friedman, Milton, "The Social Responsibility of Business is to Increase its Profits," *New York Times*, September 13, 1970, https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html. For an example of the connection between Friedman and current populism, see, Wolf, Martin, "There is a Direct Line from Milton Friedman to Donald Trump's assault on Democracy," in *Milton Friedman 50 years later*, Luigi Zingales, ed. (Chicago: Stiegler Center, 2020), https://promarket.org/2020/10/04/milton-friedman-donald-trump-assault-on-democracy-corporations/.

64 Khaitan, Tarun, "Guarantor Institutions," (forthcoming) prepared for the prevention project directed by the present author and hosted by the Center for Human Rights and Global Justice at NYU.

65 Pritchett, Lant, and Frauke de Weijer, "Fragile States: Stuck in a Capability Trap? World Development Report 2011, Background Paper, https://openknowledge.worldbank.org/bitstream/handle/10986/9109/WDR2011_0001.pdf?sequenc.

66 "Commissioned Corporate History," chapter 8 of Leora Bilsky, *The Holocaust, Corporations, and the Law: Unfinished Business* (Ann Arbor: University of Michigan Press, 2017).

67 Harris, Leslie M., et. al., eds., *Slavery and the University*, (Athens, GA: University of Georgia Press, 2019).

68 See https://greensborotrc.org/; On the US reckoning with its past, see Susan Neiman's indispensable *Learning from the Germans. Race and the Memory of Evil*, (New York: Farrar, Straus and Giroux, 2019).

69 In the opposite direction, i.e., not towards the local but the transnational, it is worth following the commission established by the Belgian Parliament in 2020 to examine Belgium's historical relations with the DRC, Rwanda, and Burundi. The commission is off to a slow start. See e.g., "Belgium – Moving from regrets to reparations." Human Rights Watch, https://www.hrw.org/news/2020/06/30/belgium-moving-regrets-reparations#.

70 Ignatieff, Michael, "Articles of faith," *Index on Censorship* (1996) 25(5): 110–122.

71 For a beautiful general reflection about the importance of truth in the constitutional state, see Peter Häberle, *Wahrheitsprobleme im Verfassungsstaat*, (Baden-Baden: Nomos, 1995).

72 I address some of these issues in my report on truth commissions to the Human Rights Council A/HRC/24/42

73 "The World is Fixated on the Past," The Economist Dec 22, 2018; See also Masha Gessen, *The Future is History* (New York: Riverhead Books, 2017), and Svetlana Boym, *The Future of Nostalgia* (New York: Basic Books, 2002).

74 "1619 Project," *New York Times Magazine*, August 2019, https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html; The final report of the 1776 Commission is available at: https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf.

75 Op. cit. (Melbourne University Press, 2011).

76 Op. cit. (New Haven: Yale University Press, 2017). For an exchange with Rieff, see https://www.ictj.org/debate/remembrance/opening-remarks.

77 References to "memory" and "remembrance" are undifferentiated and insufficiently defined. Appeals to these terms can refer both to acts of recollection that have undergone no "filtering," "processing," or effort to check for veracity or comprehensiveness as well as to those acts of recollection that have already gone through the sort of examination, contestation, contextualization, and verification characteristic of both historical methodologies and the work of, for example, truth commissions, whose reports are much more than mere records of the memories of those who provided testimonies to them.

78 Müller, Jan-Werner, "Why culture wars are an elite device. Plutocratic populists reduce economic conflicts to questions of belonging" *New Statesman*, September 6, 2021, https://www.newstatesman.com/long-read/2021/09/beyond-the-culture-wars.

79 Draft bill available at https://www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-64-1.PDF.

80 The bill under discussion in parliament would replace the so called 'historical memory law' of 2007 (available at https://www.boe.es/eli/es/l/2007/12/26/52/con), widely seen to have been insufficient in many respects. See my report on Spain to the Human Rights Council, A/HRC/27/56/Add.1.

81 Although the curriculum has changed, politicians still engage in this type of historical revisionism to this day. Last July, a former minister, at an event chaired by the leader of the Popular Party denied that there had been a coup in 1936. See https://elpais.com/espana/2021-07-20/criticas-al-pp-por-el-acto-que-organizo-donde-un-exministro-nego-que-franco-diese-un-golpe-de-estado.html.

82 "Activists target removal of statues including Columbus and King Leopold II," *The Guardian*, June 10, 2020, https://www.theguardian.com/us-news/2020/jun/10/columbus-king-leopold-ii-statues-could-be-next-to-fall-black-lives-matter-protests; Ebrahimji, Alisha, "Confederate statues are coming down following George Floyd's death. Here's what we know," CNN, June 9, 2020,https://www.cnn.com/2020/06/09/us/confederate-statues-removed-george-floyd-trnd/index.html.

83 Treisam, Rachel, "Nearly 100 Confederate Monuments Removed In 2020, Report Says; More Than 700 Re-

main," NPR, February 23, 2021, https://www.npr.org/2021/02/23/970610428/nearly-100-confederate-monuments-removed-in-2020-report-says-more-than-700-remai.

84 Díaz, Johnny, "Mexico City to Replace Columbus Statue With Indigenous Woman Monument" *New York Times*, 7 September 2021, https://www.nytimes.com/2021/09/07/world/americas/mexico-city-columbus-statue.html; Resistance to celebrations of Columbus have a longer history, see https://www.nytimes.com/2018/10/05/us/columbus-day-italians-indigenous-peoples-day.html.

85 Neiman, Susan, *Learning from the Germans*, p. 263. A virtual industry on questions of memorialization has grown over the years. In between, say, Sanford Levinson, Written in Stone: Public Monuments in Changing Societies (Durham: Duke University Press, 1998), and Laura A Macaluso, Monument Culture: International Perspectives on the Future of Monuments in a Changing World (Lanham, MD: Rowman & Littlefield, 2019), thousands of articles and hundreds of books have been published on this topic.

86 Neiman, *Learning from the Germans*, p. 264.

87 Landrieu, Mitch, "On the Removal of Four Confederate Monuments in New Orleans," delivered 19 May, 2017, available at https://www.americanrhetoric.com/speeches/mitchlandrieuconfederatemonuments.htm. pp. 4 and 5.

88 The 'Victory Monuments' established by the Sinhala majority government in Sri Lanka in the Tamil and Muslim majority provinces in the North and the East, having razed Tamil and Muslim shrines and cemeteries to erect such monuments are a perfect example of how not to engage in memorialization activities. See, e.g., Erasing the Past. Repression of Memorialization in North-East Sri Lanka (Washington DC,: PEARL, 2016), available at: https://pearlaction.org/wp-content/uploads/2016/11/pearl-erasing-the-past-nov-1-2016-report-b-1.pdf Contrast this with the numbers published by the German Federal Office of Political Education, which show that in 1989 Berlin alone had more than 423 monuments to the victims of National Socialism. See Neiman, Learning from the Germans, p. 110. The US, of course, has problems of its own. According to the National Register of Historical Places kept by the National Park Service, of 95,214 properties listed, only 2 percent are related to African American History, 0.14 to Latino heritage, and 0.1% to 'Asian' history. Data from Esra Akcan, *Right to Heal: Architecture in Post-Conflict and Post Disaster Societies* (Manuscript, p. 29).

89 So, although, in the recent past memorialization discussions and activities have emphasized toppling of statues, there are alternatives to removals that should be kept in mind. Removals are easy and replacements feasible. But not necessarily the most effective option, especially in the long run. Reinterpretation, contextualization, and other pedagogically more sophisticated reactions should be kept in mind.

90 The non-exhaustive list of 'political apologies' compiled by Graham Dodds starts with the apology offered in 1077 by Holy Roman Emperor Henry IV to Pope Gregory VII for church-state conflicts which included standing barefoot in the snow for three days. https://www.angelfire.com/un/just1/apologies.htm but clearly this is not the first one. Other lists of apologies appear in Eric Yamamoto, "Race Apologies," Journal of Gender, Race, and Justice 1 (1997), Michael Cunningham, "Saying Sorry: The Politics of Apology," *Political Quarterly 70* (1999) and more recently in Daniella Stoltz and Beth Van Schaack, "It's never too late to say 'I'm sorry;' Sovereign Apologies over the Years." *Just Security*, March 16, 2021. Available at https://www.justsecurity.org/75340/its-never-too-late-to-say-im-sorry-sovereign-apologies-over-the-years/, We now have a data base of official apologies. See The Political Apology Database, from the Political Apologies across Cultures website: http://www.politicalapologies.com/.

91 As I do in my "The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted," in The Age of Apology. *Facing Up the Past*, Mark Gibney et. al. eds., (Philadelphia: University of Pennsylvania Press, 2007), pp. 120-136. Other authors who follow this tack are Nicholas Tavuchis, *Mea Culpa*. *A Sociology of Apology and Reconciliation* (Stanford: Stanford University Press, 1991), at p. 36; Lee Taft, "Apology Subverted: The Commodification of Apology," Yale Law Journal, 109 (2000) at p. 1154; Deborah L. Levi, "The Role of Apology in Mediation," *N.Y.U. Law Review* 72 (1997), at pp. 1174-75.

92 Smith, Nick *I Was Wrong: The Meanings of Apologies* (New York: Cambridge University Press, 2008).

93 Goffman, Erving, *Relations in Public: Microstudies of the Public Order* (New York: Basic Books, 1971), p. 113.

94 Orenstein, Aviva, "Apology Excepted: Incorporating a Feminist Analysis Into Evidence Policy Where You Would Least Expect It," *Southwestern University Law Review* 28 (1999) p. 239.

95 In addition to Goffman and Orenstein, the following authors include the offer to repair as an essential component of apologies: Hiroshi Wagatsuma & Arthur Rosett, "The Implications of Apology: Law and Culture in Japan and the United States," *Law & Society Rev.* 20 (1986), at pp. 469-70; Erin Ann O'Hara and Douglas Yarn, "On Apology and Consilience," *Washington Law Review* 77 (2002), at p. 1133; and Susan Alter, "Apologising for Serious Wrongdoing: Social, Psychological and Legal Considerations," Final Report for the Law Commission of Canada, May 1999. Nick Smith in *I Was Wrong* seems to conflate the essential characteristics of the speech act with its conditions of success as well, except that, as he has come to argue, "Apologies are a process requiring time for policies to develop and patterns of behavior to emerge. They are treatments, not cures." Nick

Smith, "Should Biden Apologize for Trump? National Remorse and the 2020 U.S. Presidential Election," Society (2020) 57:698–703, here at 702. A process-based analysis of apologies would need to examine conditions of acceptability or success, and then I would agree that what he calls 'Reform and Redress' are essential parts of an apology conceived as a process. See his "An Overview of Challenges Facing Collective Apologies," Public Apologies Between Ritual and Regret, eds. Daniel Cuypers, Daniel Janssen, Jacques Haers, and Barbara Segaert (Amsterdam: Rodopi, 2013), p. 31.

96 Germans themselves, at the time, were not so keen on the gesture. In polls at the time 48 percent disagreed with what the Chancellor did and only 41 percent approved. The international community was much more positive: Time Magazine made the Brandt Man of the Year, and he was awarded the Nobel Peace Prize the next year. In his memoirs, Brandt says of his silent gesture: 'At the abyss of German history and burdened by millions of murdered humans, I acted in the way of those whom language fails.' For a succinct account of the event see Deutsches Historisches Museum, "The Warsaw Genuflection: Willy Brandt's Historic Gesture," https://www.dhm.de/blog/2016/12/07/392/.

97 "Apology to Australia's Indigenous Peoples," *Australian Government*, https://info.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples.

98 Mao, Frances, "Australia's Apology to Stolen Generation: 'It gave me peace'" *BBC News*, February 13, 2008, https://www.bbc.com/news/world-australia-43039522.

99 I am using Lazare's formulation of this view, but his own position is actually more complex; Lazare starts his analysis of successful apologies by examining the psychological needs of the "offended party," and arguing that success must mean that the apology must have met one of those needs. The needs he identifies are: "restoration of self-respect and dignity, assurance that both parties have shared values, assurance that the offenses were not their fault, assurance of safety in their relationships, seeing the offender suffer, reparation for the harm caused by the offense, having meaningful dialogues with the offenders." Aaron Lazare, On Apology (Oxford: Oxford University Press, 2004), p. 44. However, Lazare acknowledges that there is a difference between identifying a need that an apology might satisfy and understanding how an apology might satisfy that need, and even in his later work the most categorical statements about how apologies work reaffirm the exchange relationship described below. See, e.g., ibid, p. 52. Independently of where Lazare finally stands on this issue, the exchange relationship account has taken hold. See, e.g., Martha Minow, Between Vengeance and Forgiveness (Boston: Beacon Press, 1998), p. 115.

100 Lazare, "Go Ahead, Say You're Sorry," *Psychology Today* 23:1 (1995), p. 42. Lazare elaborates this position in On Apology, p. 52.

101 Lazare, On Apology, p. 52.

102 "The Crown's Apology," The Settlement, https://ngaitahu.iwi.nz/ngai-tahu/the-settlement/settlement-offer/the-crowns-apology/.

103 "Apology to Survivors of the Tuskegee Syphilis Experiment," *Clinton Presidential Library*, https://clinton.presidentiallibraries.us/items/show/16076.

104 Courtl and Milloy, "TEXACO TAPS A DEEP WELL OF RACISM," *Washington Post*, November 10, 1996, https://www.washingtonpost.com/archive/local/1996/11/10/texaco-taps-a-deep-well-of-racism/e5767eb2-4918-4070-adbe-053be672804d/.

105 Now that we have a data base of official apologies, as mentioned before, it would be a revealing exercise to go through these lists considering how many of the examples fit the description of an exchange of power; in my view, not many, at least not in any strong sense.

106 Nicholas Tavuchis, *Mea Culpa*, p. 3.

107 Tavuchis, *Mea Culpa*, p. 13.

108 "Closing the Gap in Partnership," https://www.closingthegap.gov.au/.

109 Stoltz and Van Shaack, "It is never too late," op. cit.

110 This is the sociological 'translation' of a basic Kantian insight. No one has high-income it more than Jürgen Habermas. See, e.g., his Between Facts and Norms (Cambridge: MIT Press, 1998).

111 *National Dialogue Handbook. A Guide for Practitioners* (Berlin: Berghof Foundation, 2017), p. 1.

112 The quartet was a group of four civil society organizations, (UGTT, *Union Générale Tunisienne du Travail* [The Tunisian General Labour Union]; UTICA, *Union Tunisienne de l'Industrie, du Commerce et de l'Artisanat* [The Tunisian Confederation of Industry, Trade, and Crafts]; LTDH, La Ligue Tunisienne pour la Défense des Droits de l'Homme [The Tunisian Human Rights League] and *Ordre National des Avocats de Tunisie* [The Tunisian Order of Lawyers], that is, a labor union, a trade group (representing the interests of Tunisia's businesses), a network of human rights NGO, and an association of lawyers. This group of strange bedfellows helped the deadlocked constituent assembly which was badly divided between secularists and religious forces, with the latter in the majority, adopt a constitution that all Tunisian could accept.

113 Thania Paffenholz, Anne Zachariassen, and Cindy Helfer, *What Makes or Breaks National Dialogues?* (Geneva: Inclusive Peace and Transitions Initiative, 2017), p. 8.

114 Continuing with the doubly ambiguous statement, "[i]n cases with ongoing violence, National Dialogue outcomes were sometimes constrained, but no clear pattern was found in the analysis." *Ibid*.

115 See my report to the General Assembly on National Consultation Processes, A/71/567, Available at: https://undocs.org/

en/A/71/567.

116 Ibid. and the literature there-in.

117 Paffenholz et. al., *What Makes or Breaks National Dialogues?* p. 9.

118 "Theorizing Transitional Justice," and "Some thoughts on the Development and Present State of Transitional Justice," *Zeitschrift für Menschenrechte /Journal for Human Rights* 5, 2 (2011).

119 Thomas, Laurence Mordekhai, "Power, Trust, and Evil," in *Overcoming Racism and Sexism*, ed. Linda Bell and David Blumenfeld (Lanham, MD: Rowman and Littlefield, 1995), 160. Annete Baier argues that trust in general, as a disposition that mediates social interactions, "is an alternative to vigilance and reliance on the threat of sanctions, [and] trustworthiness... an alternative to constant watching to see what one can and cannot get away with, to recurrent recalculations of costs and benefits." See her "Trust and Its Vulnerabilities," in Moral Prejudices (Cambridge, MA: Harvard University Press, 1994), 133.

120 Offe, Claus, "How Can We Trust Our Fellow Citizens?" in *Democracy and Trust*, ed. Mark Warren (Cambridge: Cambridge University Press, 1999), 70-71.

121 This was always an unarticulated part of questions about trust in surveys reviewed above; recall the NES question: "How much of the time do you think you can trust the government in Washington to *do what is right*?" Interestingly, in 2020 Richard Edelman, CEO of the eponymous company announces a shift in the way the barometer will understand the notion of trust, paying more attention to its normative dimensions: "We have always known that people grant their trust based on two distinct considerations: competence and ethical behavior; for two decades we have asked people if they trust institutions "to do what is right." Now, based on new societal expectations, we are probing deeper into "what is right," measuring purpose, vision, honesty and fairness as the dimensions of ethical behavior." Richard Edelman, "The Evolution of Trust," https://www.edelman.com/insights/evolution-trust.

122 "…the structure of modern society is such that neither class subordination nor status subordination can be adequately understood in isolation from the other. On the contrary, misrecognition and maldistribution are so complexly intertwined today that each must be grasped from a larger, integrated perspective that also encompasses the other. Only when status and class are considered in tandem, in sum, can our current political dissociations be overcome." Fraser, Redistribution or Recognition, p. 69.