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Truth Commissions:

Institutional Strategies for Trust Construction and Conflict Management

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Abstract

The problem of how to deal with a past of human rights abuses in societies transitioning from authoritarian rule or civil strife towards more democratic governing structures is becoming more widespread. Conflicts over issues of justice, memory and accountability precede social reconciliation and the building of viable institutions. Truth commissions have emerged as institutional approaches to deal with some of these issue conflicts. However, in the relevant literatures, there is no coherent theoretical framework by which this type of institution can be analyzed and explained. This paper conceptualizes the underlying obstacle to effective conflict management and institution-building as one of the absence of individual trust, both in other individuals as well as in existing institutions. It is argued that truth commissions represent institutional conflict management strategies towards trust construction. Information recovery and distribution; identification with international standards; and, signaling are identified as potential means by which truth commissions potentially contribute to the reconstruction of trust-based interaction and conflict management in post-crisis states. The ideas set out in the paper are applied to the case of South Africa and its Truth and Reconciliation Commission.

Note: This draft is a preliminary attempt to develop a theoretical approach for my dissertation. Any comments on the conceptual approach and the theoretical framework will be appreciated. Since the case usage is purely illustrative, any suggestions for empirical testing and/or research design are much needed.

Introduction

> Fragile, tentative democracies time and again hurl themselves toward an abyss, struggling over this issue of truth. It's a mysteriously powerful, almost magical notion, because often everyone already knows the truth—everyone knows who the torturers were and what they did, the torturers know that everyone knows, and everyone knows that they know. Why then this need to risk everything to render that knowledge explicit?[1]

The problem of dealing with a past of human rights abuses in societies transitioning from authoritarian rule and civil strife towards democracy is becoming more widespread. Authoritarianism, civil war and violence have been a part of the political landscape for centuries. Until recently the magnitude and method of violence employed by non-democratic states against their own citizens was considered a *fait accompli*—an unfortunate reality. As states transition from repressive regimes, they confront the problem of how to deal with a violent past and how to transform habits of brutality so that democratic institutions can take hold. Conflicts emerge over issues of justice, memory, accountability and retribution. Truth commissions, varying in mandate and design, ostensibly address these conflicts by pursuing objectives of truth, justice and reconciliation. Since 1974, 19 truth commissions—investigative institutions grounded in international human rights law—have been used in 17 states, including El Salvador, Chile, South Africa and, most recently, Guatemala. Several more are under discussion.[2] Extant arguments endorsing truth commissions emanate from the community of international human rights lawyers. These arguments emphasize a range of functional objectives, such as promoting a human rights culture and rule of law, documenting violations, deterring human rights abuses and facilitating social reconciliation. While it may be true that truth commissions have some role in

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[1] Lawrence Weschler, *A Miracle, a Universe: Settling Accounts with Torturers* (New York: Pantheon Books, 1990), 4.

[2] For a discussion of where truth commissions have been used, see Priscilla Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16 (1994): 597-655. It should be noted that I am really talking about a subset of transitioning states. Transitions from regimes characterized by periods of repression and human rights abuses towards a more democratic forms of governing structures.

accomplishing these goals, this conclusion has not yet been theoretically derived or empirically documented. This lack of examination is particularly problematic because there are reasons to expect that truth commissions may have detrimental effects as well. Conflict levels can rise as information about the violations committed by individuals and institutions becomes publicly known and society begins to confront those responsible for what happened to them or to their loved ones. In addition, truth commissions are almost always instituted in the wake of political concessions, such as amnesty provisions, extracted by members of the previous regime. The revelation of information, often without recourse to remedy or retribution may provoke more social unrest than social reconciliation. Finally, even if conflict is muted on a social level, conflicts resulting from resistance to the work of commissions by individuals and institutions, such as the police or the military, can seriously threaten fragile political transitions. This paper draws on the tension between social imperatives of accountability and justice versus political constraints stemming from the fact that the very individuals and institutions scrutinized by such commissions still have considerable influence.[3] What role do truth commissions play in the pursuit of social reconciliation and the building of new political communities? How can we understand the relationship of truth processes and conflict dynamics in new democracies?

Strategies for managing conflict in transitions

A deep problem for states transitioning to democracy is that conventional domestic institutional sources for conflict management, such as the courts, police, defense forces and other political bodies, are rendered less effective at performing this task.[4] Several reasons might

[3] For a discussion of issues related to grappling with questions of accountability and the past, see Guillermo O'Donnell and Philippe Schmitter, *Transitions from Authoritarian Rule* (Baltimore: Johns Hopkins University Press, 1986), 28-32. See also, Samuel Huntingdon, *The Third Wave of Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), 211-231.

[4] The capacity of domestic institutions to perform conflict management functions varies across cases. For instance, in some cases, such as the authoritarian regimes in Latin America, judiciaries were virtually non-existent or had very little independence. This contrasts greatly with the case of South Africa, where the law and the judiciary were instrumental in

account for the diminished capacity of these institutions to manage conflict. First, these institutions may never have been in place to manage conflict in the way that task is understood under democratic norms. The task of managing conflict under authoritarian or communist regimes was conceptually quite different from the nature of conflict management in emerging democracies.[5] Second, these institutions may be in flux and disorganized due to the transition process making it difficult for them to adjust and cope with the demands of a dynamic situation. Third, the institutions themselves may be stable, but the individuals, procedures and operational principles are legacies of the past regime and, to the extent the previous regime has been discredited, these institutions appear politicized or co-opted. Their affiliation to the past undermines their efficacy because citizen confidence in them has been damaged. Fourth, institutions that constitute legacies of the past regime may be part of the problem by actively contributing to conflict. Dynamic political developments, initiatives to restructure, and reform measures threaten to impinge on their power, causing these institutions to protect their bases of autonomy. Finally, the nature of conflict substantively changes in the course of transition, incorporating issues that previously had not existed, necessitating innovation.

If extant institutions may not be relied upon to manage emerging issue conflicts, transitioning states must find alternative methods to cope with them. Emerging conflicts over how to deal with the past are diverse and have been met with a range of responses. On one extreme end of a continuum, transitioning states have chosen to do nothing. Neither Spain, Zimbabwe, Mozambique nor Cambodia utilized any measures to address the past. At the opposite end of that spectrum, states have employed prosecutorial strategies in which accused

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both the maintenance of the apartheid state and in its demise. For a discussion of the politics of judicial accountability and reform in Latin America, Africa and Eastern Europe, see Andreas Schedler, Larry Diamond, and Marc F. Plattner, eds., *The Self-Restraining State: Power and Accountability in New Democracies* (Boulder: Lynne Rienner Publishers, 1999), 145-214.

[5] The dilemma for democracies is how to maintain order, while still encouraging political and social competition. In other words, democracies encourage some forms of conflict as healthy, while attempting to inculcate bounds that prevent its

individuals have been subjected to trials. Trials may be conducted within the domestic legal system, as in the case of Argentina.[6] Or, by international tribunals and courts, as in the case of Rwanda. Alternative approaches have included the opening of secret security files along with specific legal remedies, as in the case of East Germany. Lustration laws, such as those passed in the Czech Republic prevent individuals identified with the past regime from holding certain official posts.[7] While doing nothing may be the most widespread response to dealing with the past, truth commissions have enjoyed increasing use. However, these institutions are not unproblematic—created in sensitive political circumstances, they reflect deep sociopolitical tensions.[8]

Advocating truth commissions

One strategy, of many possible, to deal with a violent past is the use of a truth commission. The following arguments, located within a relatively circumscribed community of international human rights professionals, are generally made in favor of establishing these commissions. Truth commissions are often justified through reference to desired effects, which include inculcating human rights values, rule of law, and reconciliation. However, the relationship of this institution to the effects sought remains unexplored and unexplained. The most common arguments for truth commissions emphasize five distinct, but related, sets of ideas. First, truth commissions are an official means to deal with human rights violations of former governments by acknowledging past transgressions against individuals and society. This

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escalation to violence. This contrasts to authoritarian systems where not only is order valued, it is maintained by proscribing competition and plurality.

[6] For a discussion of the processes leading up to the prosecution of select members of the Argentine junta, see Carlos H. Acuña and Catalina Smulovitz, "Guarding the Guardians in Argentina: Some Lessons about the Risks and Benefits of Empowering the Courts," in *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams (Notre Dame: University of Notre Dame Press, 1997), 93-122.

[7] For an extensive study of how various states have dealt with these issues, see Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. I, II, III (Washington, D.C.: United States Institute of Peace, 1995).

[8] For a discussion of the political constraints facing truth commissions, see José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law*

approach is largely psychological and is deeply connected to the discussion of personal and social reconciliation. The idea that building social and political institutions must be morally predicated upon acknowledgment of historical truth, as argued by its proponents, suggests a relationship between truth-telling, justice, and national reconciliation.[9]

Second, truth commissions are presented as a means to accurately record history, i.e., who did what to whom, when, where, and under what circumstances. This approach conceptualizes commissions as institutional repositories of information; their charge is to determine the contours and content of a particular historical period.[10] In this sense, truth commissions become an institutional form of common memory.

Third, truth commissions are symbols of advances in the human rights movement. This approach conceptualizes commissions as institutional representations of the diffusion of international human rights principles and norms. Beyond being symbolic, it is argued that they are vehicles to introduce these norms in the domestic context and inculcate what is referred to as a human rights culture.[11]

Fourth, truth commissions are presented as instrumental in the quest for justice. While there is a less sanguine view of the role truth commissions have to play in the pursuit of justice,

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Journal 43:6 (August 1996), 1426-32. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace, 1995), 203-221.

[9] For an explication of this argument, see Mary Albon, *The Charter Seventy-seven Foundation Report of Inaugural Meeting* (Salzburg: Project on Justice in Times of Transition, March 7-10, 1992), 5-18. See also, Alex Boraine, et.al., eds., *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town: IDASA, 1994). For a discussion of some distinctions that separate and confound the concepts of truth, reconciliation and justice, see Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (New York: Henry Holt and Company, 1997), 164-190. See also, Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998).

[10] The emphasis on the substantive description of a historical period versus a singular event, regardless of how significant, is perceptable throughout much of the discourse on such commissions. Hayner's definition encapsulates this view and possesses four elements. Truth commissions focus on the past, are temporary, are vested with authority and greater access to information and attempt to "paint the overall picture of certain human rights abuses, or violations of international humanitarian law, over a period of time" (Hayner 1994, 604).

[11] See Kader Asmal, *Reconciliation through Truth: A Reckoning with Apartheid's Criminal Past* (New York: St. Martin's Press, 1997).

there is a general sense that in some way they contribute to it.[12] Truth commissions present opportunities for victimized individuals and groups to obtain some measure of satisfaction that their experience will not go unrecognized and that those responsible will be held accountable—imparting a sense of justice to facilitate individual healing. Finally, it is argued that truth commissions function as deterrents to future human rights violations.

Changing focus—trust as prior

Due to the presence of political and resource constraints, the ability of truth commissions to meet the above objectives is highly problematic. So, why a truth commission? What causal relationship, if any, exists between this institution and the objectives of reconciliation, the building of a human rights culture, justice, or even individual healing? This paper does not address these questions directly because, prior to understanding how the above objectives are realized, one needs to explore conditions conducive to building a viable foundation for social and political interaction. Reconceptualizing, the question is not "how is a human rights culture built?" Rather, it is essential to understand how to reconstruct a fundamental ingredient of social interaction—trust—that may facilitate restoration of an individual's relationship with herself, her community, and the state.

The lack of trust engendered by extended periods of repression is one of the most basic obstacles to managing conflict and to building viable political institutions based on democratic principles. I argue that profound lack of trust poses a barrier to social collaboration and that this problem is prior to conflict management, reconciliation, and the building of a human rights culture. Without overcoming this barrier to social interaction and cooperation, transitioning societies will be hard-pressed to establish the norms and procedures that promote the

[12] There is a strong emphasis in the literature regarding the dichotomous nature of the problems facing transitioning societies. The two most prominent dichotomies are between truth and justice, retribution and reconciliation. See Weschler, 3-4, 237-

establishment of healthy democratic institutions.[13] It will also be more difficult to obtain citizen deference and cooperative behavior towards governing structures.[14]

While truth commissions necessarily fall short of producing truth, justice and reconciliation, they may be able to facilitate these outcomes by affecting the level of social trust. What is the relationship between an institution such as a truth commission and social trust construction? How might this institution facilitate the movement from a state of distrust to a more trusting interactional environment? Or, do truth commissions have precisely the opposite effect of reinforcing the actuality of social and political divisions and reaffirming the logic of distrust? Specifically, how might truth commissions affect barriers to trust-based interaction by impacting an individual's beliefs about risks and expectations with respect to social collaboration?

To explore these questions, I employ concepts and findings of organizational research salient to the bases and dynamics of trust. I identify three mechanisms by which truth commissions may affect processes of trust construction. First, through information recovery and distribution, commissions potentially modify an individual's assessment of their interactional experiences by situating those experiences in a more comprehensible context. Viewing past interactive experiences in the context of a richer information environment allows individuals to adjust their expectations with respect to future interactions. Second, through identification with international standards, truth commissions can affect individual beliefs about the content of norms governing domestic institutions. In addition, by creating a prominent normative link

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[13] Establishing the direction of causality between constructing trust and creating healthy democratic institutions is problematic. As will be discussed later in the paper, trust levels change through interaction and often depend on the outcomes of previous exchanges. Therefore, one could just as well argue that good performance by democratic institutions or positive interactive experiences, such as negotiations, can foster trust. I emphasize, however, that distrust poses an initial barrier, which if not lowered, precludes engagement in repeated social interaction.

[14] Roderick Kramer discusses the relationship between trust and voluntary deference within hierarchical relationships. Kramer writes: "...efficient organizational performance depends on individual's feelings of obligation toward the organization, their willingness to voluntarily defer to organizational authorities. In addition, when conflict arises, trust is important because it

between domestic institutions and international legal principles such commissions may impact citizens perceptions of institutional fairness and accountability.

Third, truth commissions can affect the level of social trust through signaling. By conceding to investigation, representatives of previous regimes can send a costly signal that communicates their commitment to abide new guiding principles. The signal is costly because, as objects of investigation, individuals and institutions of the past regime stand to lose power, resources and security. Therefore, truth commissions constitute a costly signal that affects probabalistic beliefs about the actuality of changes in rules and norms of governance.

The paper develops as follows. The next section explores the concept of trust and its role in social exchange and institution building. I then discuss bases of trust identified in organizational trust research. I follow by examining the relationship of conflict management strategies and trust construction. I then develop a theoretical framework, consisting of the three mechanisms identified above to explicate the role of truth commissions in trust construction and conflict management. I then apply the logic of this framework to the case of the South African Truth and Reconciliation Commission.

The Role of Trust

Defining Trust

The essentially multifaceted nature of trust lends itself to many formulations. Therefore, exploring of the role of trust in social collaboration and conflict management necessitates the specification of a working definition. Some definitions emphasize trust's social and ethical dimensions—characterizing it as "the expectation...of ethically justifiable behavior—that is

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influences acceptance of dispute resolution procedures and outcomes." See Roderick Kramer, "Trust and Distrust in Organizations: Emerging Perspectives, Enduring Questions," *Annual Review of Psychology* 50 (1999): 585.

morally correct decisions."[15] Others focus on its strategic qualities--defining trust simply as "anticipated cooperation."[16]

Current theoretical formulations of trust in the body of choice theory generally subscribe to two images of choice. First, choice is a function of rational and calculated decision-making. Second, choice is a function of decision-making within a social and relational context. In the first perspective, trust is the object of a rational decision process—trust is therefore conditional upon a strategic incentive analysis that leads one to believe that it is in the interest of the person who is trusted to be trustworthy. Hardin captures this idea in the following statement: "You can more confidently trust me, if you know that my own interest will induce me to live up to your expectations. Your trust then encapsulates my interest."[17] The second choice perspective assimilates the "social and relational underpinnings of trust-related choices."[18] While the work in this area varies, the "common feature of these models is their broader emphasis on social rather than purely instrumental (resource-based) motives driving trust behavior, including consideration of how actors' self-presentational concerns and identity-related needs and motives influence trust-related cognition and choice."[19] Hardin proposes synthesizing these two

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[15] L.T. Hosmer, "Trust: the connecting link between organizational theory and ethics," *Academy of Management Review* 20: 379-400, p. 399 (Quoted in Kramer, "Trust and Distrust in Organizations," 571)

[16] Ronald S. Burt and Marc Knez, "Trust and Third Party Gossip," in *Trust in Organizations: Frontiers of Theory and Research*, eds. Roderick M. Kramer and Tom R. Tyler (Thousand Oaks: Sage Publications, 1996), 70. In his review of the field of trust research, Kramer asserts that regardless of whether theorists emphasize the moral or calculative aspects of trust, it is fundamentally a psychological state. Conceptualizing trust as a psychological state entails consideration of both its cognitive and affective components. Some important cognitive definitions construe trust as a set of "socially learned and socially confirmed expectations that people have of each other, of the organizations and institutions in which they live, and of the natural and moral social orders that set the fundamental understandings for their lives" Bernard Barber, *The Logic and Limits of Trust* (New Brunswick: Rutgers University Press, 1983), 164-165. (Quoted in Kramer, "Trust and Distrust in Organizations," 571.)

[17] Russell Hardin, "Trusting persons, Trusting Institutions" in *Strategy and Choice*, ed. RJ Zeckhauser (Cambridge: MIT Press, 1991), 189. This formulation of trust is also found in Oliver Williamson, "Calculativeness, trust, and economic organization," *Journal of Law and Economics* 34 (April 1993): 453-86.

[18] Kramer, "Trust and Distrust in Organizations," 573.

[19] Ibid., 574. It is not clear to my why these two conceptions of trust as choice are necessarily all that different, other than their content specification of an individual's utility function. What Kramer is referring to as the rational choice, or one might say the economic, variant assumes that individuals want to appear trustworthy because over time the material benefits of being trusted are greater than if one is not trusted. In addition, it reflects primarily a calculation of the riskiness of trusting behavior. In the relational model, it seems individuals want to be trustworthy because of the psychological and emotional

conceptions of trust as choice: "It is useful he argues, to conceptualize trust as a three-part relation involving properties of a truster, attributes of a trustee, and a specific context or domain over which trust is conferred."[20]

Reflecting this three-part conceptualization, I utilize the following definition of trust as the "undertaking of a risky course of action on the confident expectation that all persons involved in the action will act competently and dutifully."[21] This definition generically reflects attributes of the "truster", "trustee" and the strategic choice context in which the decision to trust is made. While this formulation does not specifically refer to the psycho-social and affective components of trust, these concerns should be reflected in an individual's assessment of risk and in one's expectations of how others are likely to behave. Distrust, in contrast, is characterized by a lack of confidence and suspicion.[22]

Trust and institutions: individual and social trust

In societies transitioning from regimes characterized by repression and the systematic use of violence, trust is at issue in several choice situations. First, trust is relevant to situations that require individuals to interact with institutions that they have an interest in being able to utilize, such as the police or judiciary, but which are discredited as a result of their past behavior and association with the previous regime. Second, trust is at issue in transitions as they exacerbate the uncertainty associated with consequences of interacting with particular institutions. This uncertainty is amplified because institutions are targets and agents of change and because they

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gratification obtained by being such. I don't see an obvious reason why these two components of the trust function can not be combined.

[20] Ibid. Russell Hardin, "The Street-level Epistemology of Trust," *Analyse und Kritik* 14 (Winter 1992): 505-29, paraphrased in Kramer, "Trust and Distrust in Organizations."

[21] J.D. Lewis and A. Weigert, "Trust as a Social Reality," *Social Forces* 63 (June 1985): 967-985. The risk component of this definition refers to the perceived state of vulnerability derived either from the uncertainty of prospective actions of others and/or from the certainty of their adverse motives based on reputation or experience.

become part of a competitive and conflictual environment. Third, trust is pertinent when the prior regime has instilled deep doubts in individuals with respect to other individuals and their community. This is a particular problem in societies in which repressive techniques enlisted the cooperation of large numbers of citizens and affected a substantial portion of the population.

The role of trust in individual-level relations and the relevance of trust to institution building in transitioning societies reflects the simple idea that trust acts as a lubricant to social interaction and institutional efficacy. Economic approaches to institutions locate the impetus for institutional creation in the inefficiencies generated by transaction costs that encumber exchange relations and lower net gains from trade. In this conceptualization, institutions arise as efficiency improving organizational mechanisms.[23] Trust and distrust similarly affect the quality of the exchange process. While social collaboration can and does take place in the absence of trust, its presence smoothes interaction by alleviating the need for extensive contracts and legal regulation. Contracts and structural checks do mitigate the effects of distrust by manipulating incentives and instituting enforcement mechanisms. However, as Putnam notes, "third-party enforcement is an inadequate solution to [dilemmas of collective action]."[24]

In his seminal study of the role of social capital in the performance of institutions across Italy, Putnam argues that "social trust in complex modern settings can arise from two related sources—norms of reciprocity and networks of civic engagement."[25] Social capital, defined as "trust, norms, and networks,"[26] explains varying levels of social collaboration and institutional performance. In other words, the presence of or lack of social capital explains why collaborative

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[22] For a discussion of suspicion as a central component of distrust, see Morton Deutsch, "Trust and Suspicion," *Journal of Conflict Resolution* 2 (1958): 265-79; Steven Fein, "Effects of Suspicion on Attributional Thinking and the Correspondence Bias, *Journal of Personality and Social Pyschology* 70 (1996): 1164-84.

[23] See Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985).

[24] Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993), 177.

[25] Ibid., 171.

[26] Ibid., 167.

institutions arise in some societies and not in others respectively, implying that those communities in which social capital is present grow and those in which it does not remain at "lower levels of efficiency and institutional performance."[27]

In Putnam's work, trust is a feature of social capital, along with norms of reciprocity and networks of civic engagement. Fukuyama's inquiry into the implications of trust and social capital for industrial economies goes even further in emphasizing the shared normative and ethical content of these concepts. "Trust is the expectation that arises within a community of regular, honest, and cooperative behavior, based on commonly shared norms, on the part of other members of that community...Social capital is a capability that arises from the prevalence of trust in a society or certain parts of it."[28]

The above authors have emphasized the benefits to a society having high levels of trust and social capital. However, these arguments depend on specific types of shared norms—for Putnam, reciprocity and for Fukuyama, consensus on the "moral norms of community and, in its context, the acquisition of virtues like loyalty, honesty and dependability."[29] These forms of social capital, such as trust, are what Hirschman has called 'moral resources'—that is, "resources whose supply increases rather than decreases through use and which become depleted if *not* used."[30] However, these approaches de-emphasize the converse that distrust, suspicion and corruption are also reinforced and strengthened through exercise. Levels of both trust and distrust are conditioned by prevailing beliefs about operative norms and expectations of individual and institutional behavior.

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[27] Ibid., 178.

[28] Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (New York: Free Press, 1995), 26.

[29] Fukuyama, 27.

[30] Albert O. Hirschman, "Against Parsimony: Three Easy Ways of Complicating some Categories of Economic Discourse," *American Economic Review* Proceedings 74 (1984): 93, as cited in Putnam, *Making Democracy Work*, 169.

While the arguments made by Putnam and Fukuyama highlight what trust can do when present, they do not address the question of how societies overcome self-perpetuating distrust. Or, phrased differently, "how can trust be introduced into antagonistic situations?"[31] Hence, these approaches do not address one of the fundamental questions facing transitioning societies—how to construct trust in societies in which much of the foundation for trust-based interaction has decayed, if indeed it ever existed? How do such societies move from a state of low trust to higher trust?[32]

Bases of Trust

In order to understand how barriers to trust are lowered, it is necessary to delineate the bases upon which trust is built. Current trust research has identified several bases of trust: history-, category-, role-, and rule-based.[33] History-based trust conceptualizes trust decisions as predicated upon past experience. "Interactional histories give decision makers information that is useful in assessing others' dispositions, intentions, and motives. This information, in turn, provides a basis for drawing inferences regarding their trustworthiness and for making predictions about future behavior....According to such models, therefore, interactional histories

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[31] Walter W. Powell, "Trust-based Forms of Governance" in Kramer and Tyler, *Trust in Organizations*, 52. For game-theoretic explorations of how cooperative behavior might emerge in non-cooperative settings, see Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984). For game-theoretic examination of the stability of cooperation, see Jonathan Bendor and Piotr Swistak, "The Evolutionary Stability of Cooperation," *American Political Science Review* 91:2 (June 1997): 290-308. For the examination of the emergence of norms and their relationship to cooperation, see Jonathan Bendor and Piotr Swistak, "Cooperation and the Evolution of Norms," presented at the annual meeting of the American Political Science Association (Washington D.C., 1993); Jonathan Bendor and Dilip Mookherjee, "Norms, Third-party Sanctions, and Cooperation," *Journal of Law, Economics, and Organization* 6:1 (Spring 1990): 33-63; Russell Hardin, *One for All: The Logic of Group Conflict* (Princeton: Princeton University Press, 1995); and, Robert Sugden, "Spontaneous Order," *Journal of Economic Perspectives* 3:4 (Fall 1989): 85-97.

[32] The low-trust and high-trust characterization is taken from Fukuyama, *Trust*.

[33] This discussion of trust bases relies upon Kramer, "Trust and Distrust in Organizations", 575-581. The only prominent bases of trust mentioned by Kramer, but left out of this discussion is what he calls dispositional. The notion that trust is affected by individual predisposition is not included in this discussion because the theoretical framework presented focuses on affecting expectations with respect to specific interactions, not on impacting worldviews. I acknowledge that the social and cultural factors that affect an individual's predisposition to trust or not may be of substantial relevance. They are not, however, an analytical component of this framework.

become a basis for initially calibrating and then updating trust-related expectations."[34] This is a form of knowledge-based trust, wherein judgement is based on direct acquaintance with prior behavior and outcomes. In many situations, such as polities, directly obtained information about others is not readily available. Research shows that third parties often serve as conduits when information from direct interactional experience is not available. In this model, trust-relevant information about reputation is distributed in a network setting through gossip or through more institutionalized mechanisms.[35]

Category-based trust "refers to trust predicated on information regarding a trustee's membership in a social or organizational category—information which, when salient, often unknowingly influences others' judgments about their trustworthiness."[36] Similarly, role-based trust is "predicated on knowledge that a person occupies a particular role in the organization" rather than on any particular knowledge about that individual's attributes. This reflects confidence in processes, standards and institutions. "Such trust develops from and is sustained by people's common knowledge regarding the barriers to entry into organizational roles, their presumptions of the training and socialization processes that role occupants undergo, and their perceptions of various accountability mechanisms intended to ensure role compliance."[37]

Finally, rule-based trust refers to a form of trust based on "shared understandings regarding the system of rules regarding appropriate behavior."[38] Rule-based trust is sustained

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[34] Ibid., 575-576. An interactional history is defined as the cumulative interaction between two or more interdependent actors. For further discussion of interactional history as a bases of trust, see Lewicki and Bunker, "Trust in Relationships: A Model of Trust Development and Decline" in *Conflict, Cooperation, and Justice*, eds. Bunker and Rubin (San Francisco: Jossey-Bass Publishers, 1995).

[35] For studies on the diffusion of trust-relevant information through gossip, see Ronald S. Burt and Marc Knez, "Third-party Gossip and Trust" in Kramer and Tyler, *Trust in Organizations*, 68-89. While Milgrom, North and Weingast do not explicitly discuss trust development, the institutional example of the Law Merchant exemplifies the role of institutions as repositories and distributors of reputational information. See, Milgrom, North and Weingast, "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs," *Economics and Politics* 2 (1990): 1-23.

[36] Kramer, "Trust and Distrust in Organizations," 577.

[37] Ibid., 578.

[38] Ibid., 579.

through "socialization into the structure of rules."[39] In other words, an individual's willingness to trust is influenced by their beliefs about how well social processes educate individuals about norms and rules. "When reciprocal confidence in members' socialization into and continued adherence to a normative system is high, mutual trust can acquire a take-for-granted quality."[40]

Category-, role-, and rule-based conceptualizations all primarily rely on individuals' presumptive knowledge of categories, institutions and processes. They may or may not reflect direct knowledge. Hence, these bases are dependent on perception. Category-based trust depends on identification with a particular group and/or the classification of groups into trustworthy or not. Role- and rule-based trust depend on an assumption that individuals have knowledge of processes and institutions. Additionally, they assume that those processes elicit the confidence of individuals. Given these underlying assumptions, the capacity of any of the above bases to induce trust, depends heavily on the perceived correctness of standards, processes and categorizations.

Therefore, if the content of experience and presumptive understanding of operative norms are negative, any one of the above bases can reinforce distrust. First, interactional histories may support the prevalence of distrust as readily as they lay the bases for trust. This is observed in situations of protracted conflict or rampant corruption. The difficulty with which warring parties come the negotiating table and sustain communication attests to this. The reluctance of individuals to interact with corrupt institutions (unless they themselves are corrupt) further illustrates the point. Second, category-based trust depends on individuals being in the "right" category.[41] In the context of deeply divided societies, category-based distrust may present

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[39] J.G. March and J.P. Olsen, *Democratic Governance* (New York: Free Press, 1994), 27.

[40] Kramer, "Trust and Distrust in Organizations," 579.

[41] See for example, M.B. Brewer, "Ethnocentrism and its Role in Interpersonal Trust" in *Scientific Inquiry and the Social Sciences*, eds. M.B. Brewer and B.E. Collins (New York: Jossey-Bass, 1981), 345-59; M.B. Brewer, "In-group Favoritism: the Subtle Side of Inter-group Discrimination" in *Codes of Conduct: Behavioral Research and Business Ethics*, eds. D.M. Messick and A. Tenbrunsel (New York: Russell Sage Foundation, 1996), 160-171; and, C. A. Insko and J. Schopler,

substantial barriers to collaboration across groups. Third, role-based trust presumes confidence in the system that selects and supports individuals in the roles they occupy. However, if that system promotes, or is perceived to promote, values and individuals based on principles unrelated to role definition, it could decidedly undermine trust and engender distrust. Finally, rule-structures may propagate distrust if perceived to be unfair or widely violated. In short, any of the above bases can easily undermine trust and lead to the consolidation of distrust depending on the normative content and quality of interaction. Distrust based on historical experiences, categorical divisions, and understandings of processes and rule systems as discriminatory or corrupt poses a formidable challenge to transitioning societies.

Conflict management strategies and the construction of trust

How to effectively manage conflict and engender trust in the wake of transitions is an open question. In light of the issue context, and because "conflict" is a sweeping category, I restrict its usage. I use conflict, violent and non-violent, to refer to the domain of disputes relating to the appropriate role of institutions, justice, memory, accountability and retribution for acts of previous regimes. Theoretical thinking on the relationship between conflict management strategies and trust construction must engage attributes of the trustor, trustee and the context over which trust is conferred. In the context of transitioning states, I assume that the bases for trust have either been destroyed or actually pose barriers to cooperation due to the coagulation of sociopolitical divisions. Distrust and suspicion based on direct experience and reputation, as well as presumptive knowledge of institutions, groups, rules, and socialization processes, reinforce the lack of social engagement and keep trust levels low. In many cases, the prevalence of violence and other forms of conflict entrench social divisions and feed uncertainty.

"Differential Distrust of Groups and Individuals" in *Inter-group Cognition and Inter-group Behavior*, eds. C. Sedikedes, J. Schopler, and C. Insko (Hillsdale: Erlbaum, 1997).

While the relationship of trust and conflict management is not well understood, research has shown that the presence of trust can affect an individual's propensity to accept authority and dispute resolution processes. The likelihood of acceptance of dispute resolution procedures and outcomes depends, in part, on the level of trust in an authority's motives. It also depends on how fair procedures are thought to be.[42] These findings say something about how the presence of trust facilitates the effectiveness of conflict management procedures, but little about how conflict management processes influence trust construction.

I argue that conflict management strategies can affect trust bases in the following ways. First, they can contextualize interactional histories on a personal level. In general, individual actors make decisions and view experiences from their personal vantage points. They often know much more about their own situation and motivation than that of others. Conflict management strategies that facilitate dialogue and information sharing can serve to put interactional histories into context. This may affect the propensity to trust based on experiential knowledge by positioning that knowledge in a richer information environment. However, one must be careful not to assume that an enhanced information environment will lower barriers to trust. Revelatory knowledge made explicit—the object of "truth" processes—may serve to confirm existing beliefs that support distrust. Additionally, the reaction of individuals and institutions to processes that make information known, may corroborate risk assessments that impede trust-based interaction.[43]

Second, conflict management strategies can serve as third-party conduits. Direct experience is not necessarily sufficient to obtain information about institutions and individuals.

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[42] See for example, Tom R. Tyler, "Psychological Models of the Justice Motive," *Journal of Personality and Social Psychology*, 57 (November 1994), 830-48; J. Brockner and P.A. Siegel, "Understanding the Interaction between Procedural and Distributive Justice," in Kramer and Tyler, *Trust in Organizations*, 390-413.

[43] To some extent, this mechanism depends on an assumption that individuals assimilate information so as to update their beliefs. However, the tendency of individuals to selectively incorporate information is well documented. For a succinct discussion of cognitive and motivational biases that affect the assimilation and construal of information, see Robert H.

Indirect information in the form of reputation, gossip, and storytelling influences beliefs about the state of the world and the trustworthiness of institutions, processes and individuals. Conflict management strategies that sort and verify the validity of indirect knowledge potentially alter assessments of history and the "truth." Again, caution is advisable. I am not assuming that updated beliefs based on intermediary sources will necessarily lead to increased trust. In the absence of empirical evidence, a claim that information transmitted through intermediaries benefits the prospects of conflict management assumes that the intermediary is reliable. Since this assumption is far from warranted in the case of politically crafted truth commissions and because information can be manipulated, it is far from clear whether truth processes serve to build trust or to diminish it.

Third, conflict management strategies potentially mitigate barriers to trust presented by presumptive understandings about sociopolitical categories, roles and rule structures. Trust based on presumptive understandings relies on individual knowledge of and confidence in processes, standards and structures. In other words, an individual has confidence that a civil servant will perform well because he trusts the system that selects and trains her, not because he has any specific knowledge of her. In societies transitioning from repressive regimes, existing institutions and systems have often been discredited and suffer low levels of citizen confidence and trust. However, they do not necessarily disappear after the transition. Conflict management strategies that emphasize the reform of processes and rules, potentially induce trust by altering presumptive beliefs about the principles and norms governing institutions. The capacity of conflict management strategies to positively influence beliefs about normative content depends on the specification of norms and demonstrating an adherence to them. In the fluctuating politicized conditions of a transition, symbols are loaded and signals are noisy. Truth processes

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Mnookin and Lee Ross, "Introduction" in Kenneth Arrow, Robert H. Mnookin, Lee Ross, Amos Tversky, and Robert Wilson, eds., *Barriers to Conflict Resolution* (New York: W. W. Norton & Company, 1995), 13-15.

make much of emphasizing a break with the past. However, the ability of these processes to demonstrate fundamental changes in values is often compromised by the political climate in which they operate. The tensions and backlashes that have accompanied many truth processes serve to reinforce the prior beliefs and validate distrust.

Many strategies potentially affect the prospects of trust construction.[44] This paper focuses on one particular institutional strategy by asking the question—how might truth commissions lower barriers to trust-based interaction by affecting individual expectations and beliefs about the risk of social collaboration?

Role of truth commissions in conflict management and trust construction

I argue that truth commissions potentially affect trust construction in three ways: they contextualize interactional histories; they specify norms through identification with international standards; and, they signal commitment to those norms. First, through the collection, interpretation and distribution of information, truth commissions influence individuals' assessments of their interactional histories. An individual's future expectations may depend on past experience. Truth commissions can affect expectations about future interaction by influencing how individuals evaluate history. This mechanism affects knowledge-bases of trust. While, truth commissions vary in mandate, powers and design one of their primary operative tasks involves the collection and evaluation of information about some defined set of state-sponsored acts of violence.[45]

Actions subject to truth commission investigation have included police or military brutality and torture, disappearances, death squads, terrorism, and murder. Albeit, those directly

[44] The question of why certain strategies are employed over others involves asking a different set of questions about institutional choice. It is also the subject of another paper.

involved in such acts might be confined to a relatively small subset of individuals and institutions, in many cases the capacity of the state to execute these activities depended upon the collaboration of a large proportion of society. The perception that institutions and individuals in their midst are responsible for violence in the past derives from experience and rumor. To the extent that knowledge is personal, i.e., a product of experience, it may also be myopic—narrowly focused.[46] To the extent that knowledge is obtained through rumor, it may be inaccurate. Truth processes can situate knowledge about what happened historically within a context that elaborates on motivations of others, their beliefs and social structures. In addition, they can confirm or disconfirm the veracity of interpretations and beliefs with respect to events in the past. By collecting information and making that information available to the public, truth commissions serve as institutional intermediaries among individuals and social institutions. By individualizing responsibility, citizens can make differentiated judgements about other individuals and about the state of their institutions. Through their informational function, truth commissions enhance the knowledge environment and contextualize individual interactional histories.

Second, through identification with international standards, truth commissions can influence individual risk assessment and expectations by impacting beliefs about the content of principles governing sociopolitical institutions and processes. This happens by impacting presumptive understandings of rule structures and norms, as well as the underlying incentive structures of these institutions. Truth commissions reflect a specific set of standards and norms defined by international human rights law. Institutional identification with international

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[45] Not all commission mandates are restricted to violations committed by governments or their affiliates. Commissions have investigated abuses that may have been committed by opposition or resistance movements, as well. However, the majority of commission activity is directed towards the determination of state-sponsored acts.

[46] By myopic I mean that knowledge is interpreted solely in terms of the personal viewpoint. It is not understood in terms of a larger context that involves contemplation of the motives of the other or of the situation. This is not to suggest that the personal perspective is not important or appropriate, indeed issues of justice are extremely personalized. My intent is to

standards provides value content in a changing a normative environment. By advocating a particular collection of principles, truth processes affect beliefs about the direction and quality of normative changes. In addition, by invoking normative standards buttressed by a community of institutions external to the domestic situation, domestic institutions may influence citizen perceptions about their own fairness, credibility and accountability. By claiming that the association of domestic institutions with international standards might be strategic, I do not mean to imply that there is no domestic source of those standards. I only mean to say that, in order convincingly to demonstrate adherence to new norms, domestic institutions gain credibility if the appear to be held to account by outside actors. For example, this is the case in international election monitoring and verification. While election monitors assuage the concerns of states and international institutions, these activities also have a domestic audience that utilizes the information such activities provide. Similarly, the monitoring activities of international institutions play a role in how domestic populations perceive their institutions, for better or worse. The demonstrable application of international norms and legal principles by truth commissions may serve to impart a deeper governmental commitment to those very principles.

Finally, by establishing a truth commission, members of the previous regime can send a costly signal that communicates their willingness to abide by a new set of rules. Creating a truth commission is a process fraught with dilemmas and political sensitivities. They can threaten a fragile transitional process because they challenge the integrity of political adversaries and institutions. Submission to scrutiny, even when this exposes individuals and institutions to political, material and psychological costs, can affect an individual's estimation of the probability that normative changes are actually afoot. By accepting the validity of truth processes, representatives of the discredited regime can signal their readiness to participate in the crafting

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draw attention to the idea that behavior based on interpretation of past events can be influenced if those events are put into context.

and consolidation of new rules, values and standards that will form the operative bases for the new political communities. The decision to engage in trust-based interaction in the context of a changing political community is thus affected by an individuals estimation of the likelihood that such normative changes are real and not simply rhetorical.

The logic of the above mechanisms and their relationship to trust construction and conflict management unfolds as follows. Barriers to trust-based interaction may be lowered by influencing individual beliefs and risk calculations. Truth processes, and truth commissions in particular, impact these dimensions of the decision to engage in trust-based interaction in three ways. First, by collecting, distributing and evaluating information, truth processes can change the interpretations of past experience that condition present decisions. Second, domestic institutional identification with international legal principles influences beliefs about the nature of operative norms. Additionally, the perceived accountability of domestic institutions to international actors, affects probabalistic beliefs about those norms being observed, and the risks of social collaboration. Third, sending a costly signal, vis-à-vis a truth commission, affects probabalistic beliefs about the actuality of changes in rule structures and socialization processes.

The logic of the above processes is explored through the case of the South African Truth and Reconciliation Commission (TRC).

Case: South Africa[47]

> "... we must deliberately sacrifice, as this Bill does, the formal trappings of justice, the courts and the trials, for an even higher good: Truth. We sacrifice justice because the pains of justice might traumatize our country and affect the transition. We sacrifice

[47] The purpose of the case is solely probative. This is a preliminary attempt to explore whether the problem of trust is of salience in the context of this particular transition and to determine whether it is possible that some the mechanisms identified in the paper are operational in the empirical setting. The empirical examples used are meant to be illustrative not definitive.

justice for truth so as to consolidate democracy, to close the chapter of the past, and avoid confrontation."[48]

Conflict and Violence during Transition

South Africa's transition from a minority-run apartheid state to an inclusive democracy has been fraught with political violence[49] and deep conflicts over accountability, justice and memory. The issue of controlling violence assumed priority in transition negotiations as a result of the swell in political violence and crime during talks. "In the mid-1970s, political violence killed an average of 44 persons per month. In the middle and late 1980s the monthly average had risen to 86, and in the 1990s it was more than 250."[50] Just prior to the first inclusive elections in April 1994, political violence was reported to have doubled over the three-year negotiating process with 2,582 deaths in 1991 and 4,398 deaths in 1993. In March 1994, a month before the first elections were scheduled, the death toll was 552, the fourth highest figure since 1990.[51]

Violent surges also characterized the transition period. Interim constitutional negotiations underscored many conflict areas. For instance, how should questions of citizen rights and political accountability be dealt with? What about justice and retribution for individuals and groups brutalized during the protracted struggle over South Africa? What should be done with perpetrators of human rights violations? What about amnesty? What about

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[48] *Hansard Debates of the National Assembly of the Republic of South Africa*, 1st Parliament, 2nd Session (16-18 May 1995), 17 May 1995, 1381.

[49] The term political violence is not easily defined as the phenomenon usually reflects a diverse set of underlying causes. Sisk offers a balanced discussion structural legacies of the apartheid regime and predisposing insecurities which together were susceptible to violent expression in the face of "triggering events", which could be almost anything. For further discussion of the relationship between violence and the negotiation process in South Africa, see Timothy Sisk, *Democratization in South Africa* (Princeton: Princeton University Press, 1995). For discussion of violence in transition, see Theda Skocpol, States and Social Revolution (Cambridge: Cambridge University Press, 1979), 3-43. For discussion of ethnic conflict and conflict management, see David Lake and Donald Rothchild, "Containing Fear: The Origins and Management of Ethnic Conflict," *International Security* 12:2 (1996), 41-75.

[50] Peter Gastrow, *Bargaining for Peace* (Washington D.C.: United States Institute of Peace Press, 1995), 11. These figures, which reflect only until 1993, are quoted from the South African Institute of Race Relations, *Fast Facts* 6 (Johannesburg, 1993), 7. For analysis of the timing of violence surges and the negotiations in the period from October 1993 through June 1993, see Sisk, *Democratization in South Africa*, 244.

impunity? Contentious questions to do with indemnity could not be settled by the parties involved in negotiating the Interim Constitution. On November 18, 1993, the Negotiating Council of the Multiparty Negotiating Process[52] adopted an Interim Constitution with a post-amble that guaranteed amnesty but which left the terms and processes governing amnesty to the discretion of the first elected government. The post-amble reads as follows:

> The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization.
>
> In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end Parliament under this Constitution shall adopt a law determining a firm cut-off date which shall be a date after 8 October 1990 and before 6 December 1993 and providing for mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.[53]

Creation of the Truth and Reconciliation Commission

The first elections were held in on April 27, 1994. The new Government of National Unity could only begin proceedings on dealing with the past and the question of amnesty after taking office. However, the African National Congress (ANC) had already begun grappling with these issues. The concept for a truth commission for South Africa was initiated by the ANC in its National Executive Committee (NEC). "The idea of a Truth Commission goes back to ANC decisions...When the National Executive Committee of the ANC discussed what had happened

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[51] "South African Elections A to Z," *Weekly Mail & Guardian*, 15-21 April 1994, Supplement, p. 5.

[52] The Negotiating Council of the Multiparty Negotiating Process (MPNP) was the body responsible for conducting ongoing negotiations and the most important decision making structure. The Council consisted of two delegates (one of whom was required to be woman) and two advisers per party with a core panel of six rotating chairpersons elected from the negotiating council. Adapted from *Towards Democracy* (Durban: Institute for Multiparty Democracy, 1993 (2nd Quarter), 9 in Sisk, *Democratization in South Africa*, 227. Before the completion of multiparty talks, the Zulu nationalist Inkatha Freedom Party (IFP) and the Afrikaner nationalist Conservative Party (CP) formed a strategic alliance and withdrew from negotiations due to the opposition with which their demands for autonomous regions were met by the National Party (NP) and African National Congress (ANC).

in the country, and in particular what happened in ANC training camps like Quadro, there was a strong feeling that some mechanism must be found to deal with all violations in a way which would ensure that we put our country on a sound moral basis."[54] In 1992 and 1993, the ANC conducted two commissions of inquiry, known respectively as the Skweyiya Commission and the Motsuenyane Commission, to investigate charges that gross human rights violations had been committed in their training camps.[55]

The newly appointed Minister of Justice officially initiated discussions about establishing a national truth commission the day after his appointment to office.[56] The National Assembly Portfolio Committee on Justice (PCJ) was charged with the task of drafting legislation that would delineate the principles and institutional procedures that would govern the process of granting amnesty and promoting reconciliation.

Even though the official proceedings to embark on establishing a truth commission were not under way until May 1994, the debate about what should be done with those responsible for human rights violations in the past and how to manage the resulting human damage had commenced. In February 1994 the first of two conferences dealing explicitly with these questions was convened by the Institute for a Democratic Alternative for South Africa (IDASA). The conference, titled "Dealing with the Past: Truth and Reconciliation in South Africa,"

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[53] "National Unity" clause in the post-amble of the *Interim Constitution* of the Republic of South Africa (1993).

[54] Interview with Minister of Justice, Dullah Omar, quoted in Antjie Krog, *Country of My Skull* (Johannesburg: Random House: 1998), 5.

[55] The Skweyiya Commission, also known as the "Commission of Inquiry into Complaints by Former African National Congress Prisoners and Detainees", was established by Nelson Mandela in response to allegations of human rights abuses presented in an Amnesty International report (AI Index: AFR 53/27/92, 1992). Pursuant to allegations that the Skweyiya was biased, Mandela named a second commission, the Motsuenyane Commission, officially titled the Commission of Inquiry into Certain Allegations of Cruelty and Human Rights Abuses against ANC Prisoners by ANC Members. This Commission was staffed by individuals perceived as independent, consisting of three commissioners from the United States, Zimbabwe, and South Africa. The Report issued by this Commission confirmed the general findings of severe human rights abuses over a number of years that were reported by Skweyiya. These commissions represent the first instances of a resistance movement investigating itself after assuming power. For further discussion of the ANC commissions see Hayner, "Fifteen Truth Commissions," 625-627, 632-634.

[56] Interview with Alex Boraine reported by Mark Gevisser, "Four White Men and Truth," *The Weekly Mail & Guardian*, 19-25 May 1995, p. 9. A primary drafter the truth commission legislation, Boraine is a former member of Parliament for the

established an international forum of human rights professionals, social scientists and prominent national figures involved in addressing problems of dealing with past violations of human rights in their own states in eastern Europe and Latin America. The second conference, titled "The Healing of a Nation?," was convened in July 1994. This conference was attended by the Dullah Omar[57], Minister of Justice and Kader Asmal[58], Minister of Water Affairs and Professor of Human Rights Law. At this conference Omar presented a preliminary set of concrete suggestions regarding Commission design.

This proposal ostensibly reflected direct contributions to the Ministry of Justice and public debate in South Africa. The proposal recommended the formation of a commission consisting of a panel of eight to ten commissioners comprised of respected individuals without prominent political profiles, and three committees. The committee charged with making amnesty determinations was to judge the disclosure of acts based on the Norgaard Principles[59] as well as in relation to any pre-existing amnesty provisions. The committee on human rights violations was "to establish as complete a picture as possible of gross human rights violations which took place inside and outside South Africa between March 1, 1960 and December 5, 1993." This committee was charged with providing a forum for victims to tell their stories, gathering information and recording evidence to determine the identities and fate of victims and to make policy recommendations to the President. The committee on reparations and rehabilitation was to make recommendations on reparations to victims.[60] Conference attendees

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opposition Progressive Federal Party from 1974-1986, whereupon he and Van Zyl Slabbert, resigned in protest and formed the Institute for a Democratic Alternative for South Africa (IDASA).

57 Dullah Omar has been a human rights lawyer since 1960 who acted frequently for political prisoners. He served as chairman of the Western Cape United Democratic Front from 1987 to 1989. He is currently Minister of Justice.

58 Kader Asmal joined the ANC in 1965 and lived in exile. While in exile, he founded the antiapartheid movements in Britain and Ireland. He presently Minister of Water Affairs.

59 The Norgaard principles, named after their drafter, Carl Aage Norgaard, a Danish national and president of the European Commission on Human Rights, were formulated during the Namibian settlement to define the concept of political prisoner and when a crime can be deemed a political offence. These principles derived from extradition law.

60 Dullah Omar, keynote speech, published in Alex Boraine and Janet Levy, eds., *The Healing of a Nation* (Cape Town: Justice in Transition, 1995), 2-8.

were asked to discuss and comment on the proposed commission, which was then discussed in the executive Cabinet.

In the first few months of 1995, the PCJ engaged in negotiations on what would eventually become the Promotion of National Unity and Reconciliation Act. In January 1995, the *Weekly Mail & Guardian* reported that there had been a Cabinet-level agreement to alter the original draft of the legislation. The legislation now stipulated that amnesty would be granted pursuant to full disclosure which would be done *in camera*. The bill was redrafted in an attempt to gain cooperation from the National Party (NP).[61] The process of drafting the bill was open to submissions from any individual or group in order to make the legislation reflect an inclusive, public process. After news of the secrecy provision entered the public dialogue, a police memorandum demanding that the procedure of the Truth Commission be even-handed was submitted to the PCJ: "The memorandum demands that the NP, ANC and other organizations such as the Pan Africanist Congress [PAC] and Inkatha accept 'collective responsibility' for actions 'committed by the state or such organizations through individuals'." The police threatened to release evidence linking Cabinet ministers and politicians in the NP, ANC and others implicating them in human rights violations.[62] While the police were threatening to release damaging information about officials in the Government of National Unity, human rights and non-governmental organizations were preparing to present their own challenge to the Constitutional court, arguing that the *in camera* clause was a breach of the National Unity post-amble in the Interim Constitution.[63] The furor surrounding the drafting process, brought the situation to extreme tension. At the start of April 1995, the PCJ was still at an impasse as the NP

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[61] Gaye Davis, "Compromise Inc.: First on Amnesty, Now on the Truth," *The Weekly Mail & Guardian*, 20-26 January 1995, p. 5.

[62] Gaye Davis, "We'll Name Names, Warn Police," *The Weekly Mail & Guardian*, 27 January –2 February 1995, p. 2.

[63] Davis, 20-26 January 1995; 27 January—2 February 1995.

continued to press for closed hearings and incorporated police demands of one standard and equal scrutiny of all sides.[64]

The argument for even-handedness highlighted a sensitive conflict issue about when violence is justified and what forms of violence should be subject to international legal standards. Kader Asmal provides a moving argument for the legitimacy of struggle against apartheid and the morally divergent positions of those who fought for apartheid and those who fought against it. In commenting on the task facing the TRC, Asmal writes:

> These responsibilities, particularly of inquiry into 'causes' and into political accountability, place crucial questions of moral and political responsibility in the agenda of the Truth and Reconciliation Commission... [The Commission] must reach conclusions as to the primary causes of South Africa's past troubles.
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> It must make a finding, for instance, as to whether the soldiers of the antiapartheid resistance were murderous initiators of violence; or whether, rather, the primary violence in the old South Africa was that of apartheid, to which the resistance reacted. Such questions of causation are necessarily moral and political ones.[65]

Clashes over how the actions of each side should be judged were evident in the public, through media reports, in PCJ negotiations, and in Parliament itself. Danie Schutte, a member of the National Assembly and one of the NP representatives to work on the TRC legislation staunchly adhered to the principle of a single standard in the negotiating process. In the National Assembly debate on the Promotion of National Unity and Reconciliation bill, he made the following remarks:

> "The NP has throughout maintained that any amnesty initiative, or any investigation in human rights violations, which is based on double standards cannot possibly qualify as an instrument of reconciliation... If there is any suggestion that a distinction is to be made between persons who fought for or against the previous government, it can only be perceived to be discriminatory. Then it is not reconciliation on equal terms, but a witch-hunt or inquisition. That could only be a recipe for disaster in South Africa, where our

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[64] Gaye Davis, "Truth Commission Still in the Doldrums," *The Weekly Mail & Guardian*, 31 March—6 April 1995, p. 2.
[65] Asmal, 25.

new-found democracy is still very fragile... It is for that reason that we fought very hard for equal criteria and procedures to apply to all sides of the fray."[66]

The tension between and the political consequences of affirming the legitimacy of violent "moral" resistance and political insistence on the adoption of a single standard consistently applied, encapsulates one of the major issue conflicts facing South Africa in the prelude to the TRC.[67] Establishing accountability in the face of this dilemma was a task left to the Commission. The conflicts over these issues continue, as evidenced by the controversy surrounding the October 1998 release of the Commission's official report.

Distrust and conflict management in South Africa

> "The dynamics of the apartheid era conflicts had many spin-offs. The conflict environment led to a range of other associated divisions and intra-community dynamics. There were divisions arising from suspicions regarding police informers, collaborators and internal power struggles among ANC supporters. Interpersonal conflicts were drawn into the political vortex and the dividing line between politics, criminal activity and interpersonal disputes became very indistinct.
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> "These divisions are not resolved. People still mistrust each other. Victims still wonder if their neighbor or their councilor was the one who informed on them, or who spread the rumor about them being informers. People still wonder what secrets were still buried and how these secrets shape the operation of local politics..."[68]

The above description highlights some of the trust and conflict issues facing individuals, communities and the nation as a whole. In the study of the community of Duduza quoted above, Van der Merwe points to complex divisions arising from the distrust resulting from conflicts of

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[66] Danie Schutte, *Hansard Debates of the National Assembly of the Republic of South Africa*, 1st Parliament, 2nd Session (16-18 May 1995), 1375.

[67] The Pan African Congress (PAC) ultimately supported the Bill but voiced strong opposition to the even-handed approach. In the Assembly debate, PAC representative, RK Sizani asserted that "The PAC has no problem with the concept of a truth commission... We feel that those who fought against apartheid deserve to be given amnesty as a right, unless it can be shown that they acted excessively... It is in the area of politics of this Bill, and the implications of the even-handed doctrine, that we have our greatest reservations. This even-handed doctrine does seem to put apartheid's oppressors and its victims on the same pedestal. In this regard, the Bill does seem to cloud the issues and prejudice the case of freedom fighters." *Hansard Debates*, 17 May 1995, 1390-1391.

[68] Hugo van der Merwe, excerpt from a work in progress for the Center for the Study of Violence and Reconciliation. Published in the *Truth and Reconciliation Commission of South Africa Report* (Ministry of Justice: 1998) vol. 5, 424-427. This excerpt is part of a case study of the community of Duduza.

the past. He also asserts that deep and widespread suspicion attends individuals' responses to political structures, suspicions which are susceptible to "political entrepreneurs [fanning] the resentments of the past to encourage suspicion and resentment of the existing local leadership."[69]

In addressing the contributions of the Commission to the promotion of national unity and reconciliation, the report states that by "holding accountable not only individuals, but also the state and other institutions, and by making recommendations aimed at preventing future violations, the Commission sought to help restore trust in these institutions."[70]

The TRC and Trust Construction

In the above discussion of trust and trust development, a number of bases of trust are identified. First, there is knowledge-based trust, which depends on interactional histories. Second, there is presumptive trust, which manifests itself in the form of category- and role-based trust. Such bases depend on decision makers' presumptions about individuals and/or institutions and the categories or roles they represent. Third, there is rule-based trust, which depends on an individual's understanding of the structure of rules and the system of socialization.

To the extent that the social and political objectives of reconciliation and conflict management are dependent upon reconstructing trust bases, by what mechanisms might truth commissions impact them? I explore three specific mechanisms. First, the institution may alter an individual's assessment of their interactional history by putting those events into a comprehensible context. By contextualizing past interactive experiences, an individual can

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[69] Ibid., 427.

[70] Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, vol. 1, Chapter 5 (online), 3.

positively recalibrate their expectations with respect to future interactions.[71] A description of a two-week long "reconciliation meeting" facilitated by the TRC in Esikhawini in Northern Kwazulu-Natal, in April 1998, recounts the first open encounter between members of a hit squad that had terrorized that community six years prior and members of the community. The informal hearing was not part of the Commission's official proceedings and was intended to give the community an opportunity to ask the applicants about particular incidents. "With the emotion drained from everyone after the applicant's harrowing testimony, the final performance took on a different complexion as perpetrator and victim discussed the mechanics of the political process which brought about a season of bloodletting in the previously peaceful community."[72] While the facilitation of victim-perpetrator encounters constituted a small proportion of the TRC's activities, this example illustrates a mechanism by which the institution facilitates individual's understandings of their interactional histories. The more generic mechanism through which the Commission contextualizes histories is by acting as an information repository and distributor. Individuals can update their beliefs and adjust their expectations regarding future interaction based on knowledge obtained in an improved information environment. Additionally, by contextualizing events in the past and humanizing the parties involved, barriers to trust based on presumptive notions of the trustworthiness of others based on categorization may be reduced.

The second mechanism by which the South African Commission may contribute to the construction of trust is by forging a prominent link between itself, a domestic institution and international norms.[73] The standards and principles guiding TRC operation are grounded in international human rights law. The publicly visible identification with international norms on

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[71] I would like to note that any positive movement in the direction of trusting behavior depends upon a normative assumption that an individuals understanding of their past interactions is improved in the normative sense. Contextualization can also reinforce existing understandings and leave barriers to collaborative behavior in tact.

[72] Ken Daniels, South African Press Association report, 23 April 1998. Quoted in *TRC Report*, vol. 5, 397.

[73] For a discussion of the role of international norms and the end of apartheid, see Audie Klotz, *Norms in International Relations: The Struggle against Apartheid* (Ithaca: Cornell University Press, 1995).

the part of a governmentally sanctioned domestic institution impacts individuals' presumptive understandings of other individuals and institutions in particular roles. Additionally, the promotion of such norms nfluences presumptive notions of the governing structure of rules and socialization processes that initiate individuals and institutions into these systems. One of the major problems South Africa faces is that its political institutions have been discredited. In particular, institutions such as the police, judiciary and defense forces, for many, represent the legacy of a discredited past. While the following example refers to local political conflicts and apprehension, such distrust can be expected to extend to national political institutions as well. The Commission *Report* describes two neighboring towns of Ashton and Zolani in the Western Cape that were sites of intense and protracted conflict in the 1980s. A group known as the *Amasolomzi*, suspected of having police support, terrorized families suspected of being involved in undesirable political activity. Many members of the group continue to reside in these communities. The feelings of distrust and latent conflict "resurfaced in the course of statement taking in the area and because of the testimony given at hearings in Worcester. For example, Zolani residents told the Commission that they would only give statements to Commission staff from Cape Town, not to specially trained Ashton or Zolani inhabitants, as no one knew who could be trusted."[74] Generalized social distrust based on presumptive beliefs about sociopolitical categories; roles individuals and institutions play; and, norms that condition their behavior poses a barrier to effective engagement of citizens and political institutions. Prominent identification with international norms and a visible commitment to transforming processes of socialization into a new system of rules, as well as a significant alteration of those rules may impact the content of decision makers' presumptive understandings. By doing so, such institutions impact

[74] Daniels., 399.

the risk calculation made by individuals in their decision to trust political institutions and to engage in collaborative social behavior.

Finally, truth commissions can impact the level of social trust through signaling. By agreeing to a process of scrutiny and judgement, representatives of the previous regime can send a costly signal to demonstrate a commitment to attempt a substantive shift in guiding principles, norms and social values. Truth commissions pose risks to particular individuals and institutions. First, such commissions are threatening to individuals who are accused of wrongdoing. Individuals potentially stand to lose a lot if accused or named. Costs to individuals include possible penal repercussions, loss of position/prestige/power, diminished physical safety, and psychological costs of being disgraced. Second, such commissions are threatening to existing institutions. Existing institutions may be implicated as participating in and/or causing the violations in the period under investigation. Hence, entire institutional structures might face costs of impending change, i.e., in the form of reorganization, dismantlement, or diminished efficacy due to loss of credibility or authority. Therefore, even though truth commissions reflect political compromises, and are usually accompanied by some from of commutation, they can still be very costly to individuals and institutions depending on the changes, if any, precipitated by them. The palpability of potential costs, whether construed in material, psychological or emotive terms lends sincerity to their intent. While identification with international standards impacts an individuals beliefs about the content of a new system of rules, norms and procedures, signaling affects one's beliefs about the probability that such changes will actually occur. In this manner, signaling may influence category, role and rule bases of trust by affecting presumptive ideas about ideas and institutions.

Conclusion

The South African Truth and Reconciliation Commission, as well as other commissions in various parts of the world, are being promoted as the institutional midwives of social reconciliation, truth and justice. They are however political entities subject to political constraints. Prior to the realization of their laudable objectives is the problem of social engagement and the reinstitution of trust-based interaction in traumatized societies. It is in these terms that the problem is reconceptualized here. How might truth commissions impact the level of social trust? Three possible mechanisms are identified through which such institutions influence an individual's proclivity to trust. First, truth commissions contextualize interactional histories, based upon which individuals update their beliefs and modify their expectations of future interactions. Second, truth commissions establish a prominent relationship between the domestic political environment and international norms and standards. By doing so, commissions positively impact an individual's presumptive understandings about the rules, principles and socialization processes operating in their political institutions. Finally, truth commissions constitute a costly signal of intent. A politically costly signal influences an individual's assessment that the likelihood that the content of norms, principles and procedures are actually changing. Together, the above mechanisms affect barriers to trust-based interaction. However, the precise effects truth commissions have with respect to trust construction and conflict dynamics are undetermined. To what extent, truth commissions resolve, manage, suppress, or spawn conflict is not yet known. This is a theoretical and empirical question that requires further research.

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